

Towards Gender- Responsive Criminal Justice

from Good practices
Southeast Asia
in responding to
violence against women



Thailand Institute of Justice
affiliated with the United Nations



Thailand Institute of Justice



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A grey silhouette of a woman with curly hair, wearing a long dress, holding a sword upright in her right hand. The sword is positioned vertically, extending from the top of the page down to the middle of the page.

Towards Gender- Responsive Criminal Justice

Good practices
from Southeast Asia
in responding to
violence against women

Prepared by
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For the Thailand Institute of Justice

FOREWORD



“Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.”

*Kofi Annan
Former Secretary-General
of the United Nations*

Secretary-General Annan delivered these remarks on International Women’s Day in 1999, together with a call for ensuring that legal frameworks and institutions that are capable of dealing with violence against women are in place, and that such violence is recognised and condemned. Since then, much progress has been achieved in Southeast Asia and throughout the world in strengthening the rule of law, and in ensuring that survivors of violence against women have access to justice.

However, for many women, the situation remains bleak, and the road to achieving justice continues to be difficult. A recent study conducted by the Thailand Institute of Justice (TIJ) in partnership with UN Women, the UN Office on Drugs and

Crime, the UN Development Programme and the Vietnamese Ministry of Justice (The Trial of Rape: Understanding the Criminal Justice Sector Response to Sexual Violence in Thailand and Viet Nam) has confirmed that violence against women remains one of the most underreported crimes and the least likely to end in conviction.

Dr Eileen Skinnider, Senior Associate at the International Centre for Criminal Law Reform and Criminal Justice Policy (Vancouver, Canada) has at the request of the TIJ examined how Southeast Asia countries are seeking to improve the position of survivors of violence against women and bring perpetrators to justice. Although these countries have different legal systems, cultures and levels of development, Dr Skinnider found that all of them have developed all good practices at various stages of the criminal justice continuum, from crime prevention and early detection, all the way through trial, conviction and corrections.

The TIJ is pleased to publish her study, the first of its kind in Southeast Asia. Each good practice should be examined in the context of the country in which it was developed, but many of them can serve as inspiration for the adaptation and application elsewhere in the region, and beyond.

A handwritten signature in black ink that reads "K. Kittayarak". The signature is written in a cursive, flowing style.

*Professor Kittipong Kittayarak
Executive Director, Thailand Institute of Justice*

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ACRONYMS and ABBREVIATIONS

A2J	Access to Justice
ACW	ASEAN Committee on Women
ASEAN	Association of Southeast Asian Nations
ASEAN RPA on EAW	ASEAN Regional Plan of Action on the Elimination of Violence against Women
BPO	Barangay Protection Order (Philippines)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSAGA	Centre for Studies and Applied Sciences in Gender-Family-Women & Adolescents (Viet Nam)
CSO	Civil society organisation
DNA	Deoxyribonucleic acid
DNAA	Discharge not amounting to acquittal
EPO	Emergency Protection Order
EVAW	Elimination of Violence against Women
GBV	Gender-based violence
HEUNI	European Institute for Crime Prevention and Control, affiliated with the United Nations
ICJ	International Commission of Jurists
ICT	Information and communication technology
IPO	Interim Protection Order
IPV	Intimate Partner Violence
ISO	International standardisation organisation
IT	Information technology
LGBTQIA	Lesbian, gay, bi-sexual, transsexual, queer, intersex, asexual
MDGs	Millennium Development Goals
M&E	Monitoring and evaluation
NGO	Non-governmental organisation
OSCE	Organisation for Security and Cooperation in Europe
OSCC	One Stop Crisis Centre
PO	Protection Order
PPO	Permanent Protection Order
SAIK	Sexual Assault Investigation Kit



SDGs	Sustainable Development Goals
SOPs	Standard Operating Procedures
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNODC	United Nations Office on Drugs and Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VAW	Violence against women
VSP	Volunteer Support Person
WA2J	Women's access to justice
WCPC	Women and Children Protection Center
WHO	World Health Organization
WPS	Women Police Stations

GLOSSARY OF TERMS

Accessibility	refers to justice services that are physically accessible (services are within a physical and safe reach of those in need of the services), economically accessible (affordable) and linguistically accessible (information is provided in various formats and languages) (UN Inter-agency Essential Services Package).
Availability	refers to the coverage of justice services delivery. Services should be in reach by all populations regardless of their age, identity, culture, sexual orientation, gender identity, ethnicity and language preference, in the entire territory of the State, including by those in remote, rural and isolated areas (UN Inter-agency Essential Services Package).
Appropriateness	refers to justice services which are delivered in a way that is agreeable to women and is sensitive to their needs and perspectives (UN Inter-agency Essential Services Package).
Bail hearings	is a judicial proceeding where the court determines if a person charged with a criminal offence should be released on conditions pending trial, including cash bail or bond.
Committal hearing	is a hearing where a judge or magistrates decides if the prosecution has enough evidence for a criminal case to go to trial.
Complainant	is a legal term designating a person who has made a complaint of a crime which has not yet been proven in court.
Compensation	means quantifiable damages resulting from the violence and includes both pecuniary and non-pecuniary remedies, such as an injunction (UN Inter-agency Essential Services Package).
Court dockets	refer to the written list of judicial proceedings set down for trial in a court. In practice, a docket is a roster that the clerk of the court prepares, listing the cases pending trial.

Criminal justice

refers to a system that is derived from criminal law and focuses on concepts such as: accountability of the person who commits a crime or offends public order/violates the rights of another; and protection and compensation/redress of the victims; fairness in terms of all parties. 'Criminal justice' also refers to a mechanism for administering criminal justice that can provide a fair outcome and has appropriate capacity and authority.

Criminal justice systems

are formal justice systems dealing with criminal laws that are the responsibility of the State and its agents. They include criminal laws (criminal code, criminal procedure codes and evidentiary rules), and institutions such as the police, prosecution services, criminal courts, legal aid offices and corrections that have the responsibility for enforcing and applying the laws of the State and of administering the sanctions imposed for violation of the criminal laws.

Gender-responsive justice

means ensuring that the laws, the justice institutions, the justice processes and the justice outcomes do not discriminate against anyone on the basis of gender. It necessitates taking a gender perspective on the rights themselves, as well as an assessment of access and obstacles to the enjoyment of these rights by women and men and adopting gender-sensitive strategies for protecting and promoting them.

Gender sensitivity

refers to the aim of understanding and taking into account the societal and cultural factors involved in gender-based exclusion and discrimination in the diverse spheres of public and private life. It focuses mainly on instances of structural disadvantage in the position and roles of women (European Institute for Gender Equality).

Legal aid

in the present report, follows the definition found in the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and refers to legal advice, assistance and representation for victims and survivors at no cost for those without sufficient means or when the interests of justice so requires. Legal aid also includes access to legal information (UN Inter-agency Essential Services Package).

One stop centres

refers to a location where the services required by victims/survivors are provided. Physicians, medical personnel, police and counsellors

are in attendance at this location in order to minimise the need for the victim/survivor to travel to and from the various agencies.

Perpetrator

in the present report, refers to a person who commits violence against women.

Recidivism

in the present report, refers to repetition of offences.

Restitution

is defined as measures designed to restore the victim to her original situation before the violence (UN Inter-agency Essential Services Package).

Victim/survivor

refers to the woman impacted by violence against women or against whom violence has been committed. While both terms are used throughout this report, 'victim' is chosen primarily when discussing the criminal justice process, since this designates a legal status. 'Survivor' is used discussing women subjected to violence in more general discussions to reflect the agency of women in seeking services.

Violence against women

under international law, means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (UN Declaration on the Elimination of Violence against Women). Violence against women can be defined differently under national laws.

Women's empowerment

means empowering women to participate fully in all sectors of life and is seen as essential to build stronger economies, achieve internationally agreed goals for development and sustainability and improve the quality of life for women, men, families and communities (UN Women).

EXECUTIVE SUMMARY



In Southeast Asia, as across the globe, increasing attention has been given to the promotion of a comprehensive and multi-sectoral response to violence against women, including the need for gender-responsive criminal justice systems. Appreciating that violence against women remains highly prevalent, socially tolerated and largely unpunished crime, states in the Southeast Asian region have introduced a number of practices over the last decades in order to establish positive conditions for women to engage with the criminal justice system.

This research report reviews the wide range of good practices that countries in Southeast Asia have been undertaking in order to ensure that women subjected to violence in Southeast Asia have access to gender-responsive criminal justice processes and obtain effective justice, protection and redress. Using the international instrument - the United Nations Updated Model Strategies and Practical Measures to Eliminate Violence against Women in the Field of Crime Prevention and Criminal Justice – as a guiding framework, the criteria for identifying good practices include that they are human rights-based and victim-survivor-centred, and that they have an offender accountability approach.

SUMMARY OF GOOD PRACTICES ALONG THE CRIMINAL JUSTICE CONTINUUM

The report reviews a number of good practices in Southeast Asian countries in addressing the challenges in the criminal justice sector. It presents the good practices following the continuum of each stage of the criminal justice. The main stages are described in deliberately broad terms to take into account the variety of legal traditions in the region and the differing mandates and tasks done by criminal justice actors in the different countries.

STAGE

1



CRIME PREVENTION AND EARLY DETECTION

1.1 Formulation of criminal and protection laws in victim identification

Part of a successful strategy to prevent the occurrence of violence against women is to ensure that such violence is effectively criminalised and prohibited by law. Victim identification depends greatly on how the criminal and civil protection laws are formulated, as this establishes who is eligible for protection and criminal justice.



Good practice: **using gender - specific language** in the development of relevant laws is considered good practice as it acknowledges violence against women as a form of gender-based discrimination and addresses the particular needs of women victims. Examples include having a specific stand-alone law responding to violence against women.

Good practice: **legal definitions that fully capture the reality of the victim's experience of violence** are essential to ensuring access to justice and protection for all victims. Some laws in Southeast Asian countries have addressed the repetitive nature of violence against women; encompass a broad range of gender-based violence acts; encompass a broad range of actors in defining domestic relationships; and address the use of new technologies to commit violence against women.



**Good practice :
legal definitions that avoid myths
and stereotypes**

are important to shift the focus to the behaviour of the defendant and not to the behaviour of the victim. Legal definitions that ensure that consent is not implied by lack of resistance counters the myth that a rape victim will always resist. Laws that ensure that sexual offences are treated equally whether occurring within or outside a close personal relationship counters the myth that men cannot rape wives or girlfriends. Laws that treat all forms of intimate partner

violence as serious counter the myth that emotional abuse is not as serious as physical violence.



**Good practice :
classifying violence against women
as a public offence**

as opposed to as a crime against the person places the onus of investigation and prosecution on the state rather than the victim, sending a message to the community that all crimes involving gender-based violence are serious.



1.2 Encourage women to report

A fundamental step in the early detection and prevention of continued gender-based violence is to develop strategies that respond to why there is chronic underreporting.



**Good practice :
empowering women through legal
literacy and outreach**

is a practice seen in a number of Southeast Asian countries. Some significant features include having access to a broad range of information that is in plain language and available in various formats; and ensuring broad outreach, such as awareness campaigns that include information on legal rights and where to report.



**Good practice :
increasing opportunities for women
to report**

and making it easier for them to report is essential to encourage reporting. Southeast Asian countries have created police helplines, websites and better linkages between the police and health and social services. Innovative practices using technology in the development of phone applications are found in this region.



**Good practice :
ensuring that criminal justice
actors who deal with the media**

do so in a way that does not inappropriately portray women in the media and encourages women to report to the police.



**Good practice :
linking traditional justice
mechanisms with the criminal justice
systems**

can encourage traditional leaders, who might be the first 'door' to which a victim turns, to assist women in accessing the criminal justice system.



1.3 Early detection strategies

include ensuring that frontline criminal justice providers are able to identify and deal with victims of violence against women. This is done by creating close ties to the community, including women's organisations and community groups working to respond to violence against women, through joint trainings, joint patrolling and referral services.



Good practice : education for individuals who have contact with victims to improve their ability to recognise violence against women.

STAGE

2



INITIAL CONTACT AND REPORTING

2.1 Initial reception and receiving the reports

Successful strategies are those that appreciate how critical the first contact with the criminal justice system is for the victim and how this has an impact on her willingness to be further involved, and on the development of a case. As the frontline receivers of criminal cases, the police has an immediate and determinant impact on victims and cases involving violence against women.



Good practice : **increasing opportunities to report to the police** beyond the traditional police station is a good practice seen in a number of Southeast Asian countries. Victims who seek assistance from One Stop Crisis Centres, Victim Support Centres or Integrated Service Centres can be linked to the police, where requested by the victim.



Good practice : **ensuring a supportive environment for initial reception at the police station** is important for victims to feel that they can report to the police at police stations where their safety, privacy and dignity can be guaranteed. A number of Southeast Asian countries have developed victim-friendly premises within police stations.



Good practice : **ensuring that gender-sensitive police officers are available** in order to treat and communicate with victims is crucial to preventing secondary victimisation. There are a number of examples in this region of gender-sensitivity training programmes for all police officers, whether frontline or in dedicated or specialised units or desks. In some countries, the number of female police officers are increasing.



Good practice : **dedicated police units or specialised desks** that are trained and equipped to respond to all forms of violence against women have been found to be effective in a number of Southeast Asian countries.



Good practice : **multi-disciplinary police units** are an example of specialised police units having a multidisciplinary team, where the police officer works with victim support services or psycho-social workers when handling gender-based violence cases and reach women at first contact.



Good practice : **specific police protocols / standard operating procedures** to ensure that the police officer knows clearly what steps are required in these cases are found in a number of Southeast Asian countries, particularly those with specialised units. Some of the features of the specific protocols and standard operating procedures include procedures that: do not require the victim to confront the accused; ensure confidentiality; connect the victim with support and assistance; provide guidance on how to deal with reluctant victims; and identify high risk cases.



Good practice : **laws or policies mandating treating victims in a caring manner** are good practices in some of the countries in Southeast Asia.



Good practice : **responsiveness in handling complaints** is a practice that countries addressing the use of a variety of measures, including policies that require prioritising calls involving violence against women; documenting all calls; and ensuring that the police officer has the power to enter premises and the power to make arrests.



2.2 Assisting with formal reporting

Strategies to encourage and assist women in lodging formal complaints, and in following through on complaints, are important, especially when the form of violence is categorised as a compoundable offence, which means that in such case an official investigation cannot be initiated unless the victim makes an official complaint.



Good practice : **providing police officer who is trained to assist victims file their reports** is important to shift the burden on the police officer rather than the victim. This includes taking the victim's verbal report and then providing her with a copy of the report or written acknowledgement of her complaint to the police officer.



Good practice: ensuring confidentiality when reporting

and recognising the right to privacy of the victim of violence has been legislated by countries in this region. Certain aspects include conducting closed-door investigations and not allowing the media to have access to any information regarding the victim.



Good practice: providing the possibility of filing an anonymous report and third option programmes

expands the options for victims to report to the police while at the same time respecting the challenges they face in engaging the criminal justice process.



Good practice: gender-sensitive interviews

have many different elements, some of which are found in the practices in this region, including having the victim interviewed by a multi-disciplinary team comprised of police and psycho-socio workers.



Good practice: allowing for a formal report without the victim's consent

ensures that the criminal procedures do not place the burden on the female victim. However, good practices include balancing the victim's agency and promoting her empowerment with the state's power to proceed without her consent. Some Southeast Asian countries are making gender-based violence crimes against the state rather than crimes against the person, while others are expanding who may lodge a complaint.



Good practice: prohibiting the police from engaging in informal mediation

is a practice to counter custom and community pressure on women to not pursue formal recourses or seek punitive measures, especially against a spouse or intimate partner. Some countries in Southeast Asia explicitly prohibit police officer from engaging in mediation while others set out clear criteria in the law when mediation can be used.

STAGE

3



SAFETY AND PROTECTION

3.1 Protection measures

Effective strategies to address safety concerns are those that respond to a wide range of protection needs by diverse victims of violence. Not only is the victim's safety and well-being a stand-alone objective, but by putting victim safety and dignity at the core of any criminal justice intervention, this likely will increase her willingness to cooperate with the criminal justice system.



Good practice : protection that is empowering

and restores a woman's sense of self-worth addresses victims' common sense of shame and guilt after the violence. Important features of any protection measure are those that respect women's rights, dignity and privacy, provide women with information, advice and options and confirm their strength as survivors.



Good practice : protection measures under the criminal justice regime that are available for those victims going through the criminal justice system are found in many of the Southeast Asian countries, ranging from peace bonds, pro-arrest policies, and detention, to conditional pre-trial release.



Good practice : easily available civil protection measures exist in Southeast Asian region. Important features of such practices include: ensuring that application procedures are simple and user-friendly; allowing others to apply on the victim's behalf; are timely; providing for a range of types of civil protection orders; reducing the evidentiary rules in protection hearings; not requiring a formal report of a crime to the police; and holding authorities accountable for a failure to act on an application for a protection order.



Good practice : availability of both criminal and civil protection measures

as there is no 'one size fits all' approach to protection. Countries in Southeast Asia illustrate a diverse range of legal protection that can meet victims' varied circumstances.



Good practice : broad range of conditions available for inclusion in protection orders is a good practice that allows the authorities being able to respond to individual cases and level of risks. The range of conditions found in this region include: removal of the perpetrator from the domicile; prohibiting further contact with the victim and other affected parties, inside or outside the domicile; issuing and enforcing spousal and child support and custody orders; the victim is to be put on leave from employment, and not subject to employment termination, if stalked at the workplace. Other conditions in some countries also include: reimbursement of damages; non-possession of firearms; and requiring perpetrators to undergo intervention programmes.



Good practice : effective enforcement of protection orders is key to ensure the victims' safety. An important feature found in some Southeast Asian countries is that a breach of a civil protection order is a criminal offence.



3.2 Risk assessment and safety planning

Strategies ensure that the police officer has as much information as possible regarding the situation and the individuals involved may contribute to the victim's safety.



Good practice : conducting risk assessments to understand and carefully assess risk factors such as threats of homicide or suicide and increase in the frequency and severity of violence is a practice found in this region.

STAGE

4



VICTIM SUPPORT AND ASSISTANCE



4.1 Legal assistance and legal aid

Strategies ensure that legal assistance to victims can be proved critical to a victim's ability to access civil protection as well as criminal justice. This can be done through legal aid programmes, lawyer pro bono programmes, or paralegals or non-lawyer advocates who are trained to assist women in going through the criminal justice process.



Good practice: **effective right to legal assistance**

is important irrespective of the legal tradition present in the country to ensure that victims are understandable, effectively participate in, and be fully protected by the legal system in the context of the criminal trial of the alleged perpetrator.



Good practice: **legal aid that is gender-sensitive**

to the needs of victims of gender-based violence have been addressed in some countries in the region, for example through laws or checklists.



Good practice: **available legal aid to victims of gender-based violence**

is explicitly recognised in some Southeast Asian countries. Some laws recognise that victims might lack control of family income in domestic violence situations and address this in the eligibility provisions. Some countries use innovative methods to expand coverage of legal aid through the use of information technology.



Good practice: **expanding legal assistance available beyond state-funded legal aid**

recognises the important role played by civil society.



4.2 Victim and witness support services

Victims need a wide range of support, including psychological support, counselling, advocacy, medical and legal help as well as shelters, child support, education and job training.

STAGE

5



INVESTIGATION

5.1 Victim-centred investigations

Effective investigative strategies emphasise the unique needs of victims of gender-based violence and promote confidential and gender-sensitive approaches during questioning, evidence collection and other procedures related to the investigation.



Good practice: laws and policies that promote early and meaningful case building

are essential practices that ensure investigative techniques are evidence-based and risk-focused. Some Southeast Asian countries have introduced measures to take into account the unique needs of victims of gender-based violence in procedures involving the identification of the suspect.



Good practice: specialised units of investigators

who are trained to handle violence against



women cases are found in a number of Southeast Asian countries, a practice which contributes to consistency, a gender-sensitive response and accountability.



Good practice: guidelines for victim-centred investigations

are found in many Southeast Asian countries and include guidelines for all investigators and for dedicated units, as well as include inter-agency protocols for the police officer, forensic officer and healthcare provider for the collection and preservation of forensic evidence in cases of violence against women.



5.2 Comprehensive and gender-sensitive investigations

Strategies that promote comprehensive and gender-sensitive investigations help to ensure all available evidence which is collected in a consistent and timely manner in every case of violence against women, including common evidentiary issues in domestic violence cases and in sexual violence cases, where consent or identity is at issue.



Good practice: **checklists for ensuring comprehensive and gender-sensitive investigations** are a good practice that can be addressed how to gather certain types of evidence, including statements, photographs, medical/forensic evidence, documents and other evidence such as mobile phone calls.



Good practice: **investigating for victimless prosecutions** means improving the quality of the evidence and of the documentation in order to dissociate the victim from the criminal proceedings.



5.3 Forensic issues

Good practice in forensics ensures that medico-legal examinations are arranged only when appropriate. This means setting out clearly whether forensic examinations are required and if so, they should be done in a timely and gender-sensitive manner that takes into account the unique needs and perspectives of the victim, respects her dignity and integrity, and minimises intrusion while abiding by standards for the collection of forensic evidence.



Good practice: **standardised gender-sensitive forensic evidence protocol and forms** are found in a number of countries in Southeast Asia, including the use of rape examination kits, which contain all the necessary resources for forensic examiners to conduct the examination, collect samples and record findings.

STAGE

6



PRE-TRIAL

6.1 Victim-centred prosecutions

Strategies that promote victim-centred prosecutions appreciate how decisions to prosecute and the way the prosecution is handled will have an impact on the confidence of victims in the criminal justice system. The participation of victims is often crucial to the success of the prosecution.



Good practice:

specialised prosecutors who understand the dynamics of violence against women, both domestic violence and sexual violence is a good practice to ensure that prosecutors will be sensitive to the way they interact with the victims. Specialization often means that the victim deals with the same prosecutor from beginning to end and plays a more active role in building cases and maintaining contact with the complainant.



Good practice:

victim assistance provided by the prosecution office may contribute to making the victim feel that her report of violence is taken and listened to seriously, and that her complaint is regarded as credible and valid, all of which may prevent or reduce secondary victimisation.



Good practice:

policies to deal with reluctant victims focus on reducing the barriers that place undue pressure on the victim to withdraw charges. This include vertical prosecution (having one prosecutor assigned responsibility for a case from intake to disposition) and pro-prosecution policies.



Good practice:

fast case management at the prosecutorial stage is an important practice that includes a number of features such as fast-track procedures that can identify cases involving violence against women and prioritise them in court dockets, including bail hearings, committal hearings and for trial.



6.2 Exercising prosecutorial discretion

Effective strategies ensure that the primary responsibility for initiating prosecution is placed on the prosecutor and does not rest with the victim.



Good practice : guidelines for the exercise of prosecutorial discretion may set forth directives to promote prosecution in these cases. In deciding whether or not to prosecute, guidelines encourage prosecutors to regard violence against women as a decisive factor or an aggravating factor.

STAGE

7



TRIAL




7.1 Creating an enabling and friendly court environment


Even under the best circumstances, being interviewed, testifying or participating at trial can be an intimidating experience for victims. Effective strategies will be reducing the trauma of being in criminal court for victims and addressing the challenges of requiring live testimony and cross-examination.

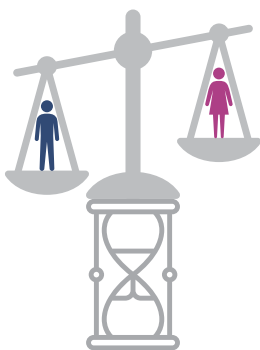
 **Good practice: special measures facilitating victim's testimony in court** are designed to ease the victim's experience during the testimony. Good practices in the Southeast Asian region include: permitting the victim to testify a manner that allows her to avoid witnessing the accused, limiting the frequency, manner and length of questioning, permitting a support person such as family member or friend to attend the trial with the victim, examination through an intermediary, and allowing a video-recorded interview as evidence in chief.

 **Good practice: specialised courts** ensure that the court's infrastructure responds to the victim's needs, for example by creating a separate waiting space for victims and offenders, and by making available video-linked equipment, in order to avoid or reduce contact with the defendant. Some countries in the region have specialised criminal courts whereas others have unified family courts.



 **Good practice: special measures protecting the privacy, identity and dignity of the victim** should be widely known by the criminal justice professionals as well as the victims and easily applied for. Good practices in the Southeast Asian region include: a ban on publication, removing any identifying information such as names and addresses from the public records of the court, using a pseudonym for the victim, and permitting victims to testify behind screens or closed hearing.

 **Good practice: designated and trained judges** are essential in ensuring that the judges hearing these cases have an understanding of the nature and implications of gender-based violence.



7.2 Evidentiary rules - non-discriminatory and gender-sensitive

The rules of evidence and criminal procedure should not discriminate against women. Examples of such discrimination might be in the weight given to the testimony of women as compared to men, or in allowing restricted evidentiary rules that disproportionately apply to female victims of violence. Court procedures and evidentiary rules can be designed to alleviate the special difficulties faced by women in court processes.



Good practice : gender-sensitive criminal procedures and evidentiary rules

found in this region include barring evidence on the victim’s sexual history and reputation and not to draw any adverse inference solely from a delay of any length between the alleged commission of an offence and the reporting thereof.

STAGE

8



SENTENCING AND CORRECTIONS



8.1 Sentencing hearing practices

Effective sentencing strategies promote the recognition of the serious nature of violence against women and the need for sentences that are commensurate with that gravity. Conducting sentencing hearings can ensure that all relevant information is before the court, which contributes to consistent and commensurate sentencing.



Good practice :

sentencing guidelines

that call for thorough, standardised and consistent sentencing of perpetrators is essential to ensure that other efforts to protect victims are not significantly undermined. Effective sentencing guidelines are those that denounce and deter violence against women, stop violent behaviour, promote victim and community safety, provide reparation for harm caused as a result of the violence, and promote rehabilitation of the offender.



Good practice :

practice – enabling the participation of victims at sentencing hearings

provides the opportunity for victims to tell the court about the physical and psychological harm and the impact of victimisation. Victims’ participation has been allowed through a broad range of methods that suit the individual needs of the victims, such as the use of victim impact statements in some Southeast Asian countries.



Good practice :

broad range of sentencing options available

to judges is crucial to respond to concerns about the limited sentencing options in Southeast Asia.



Good practice :

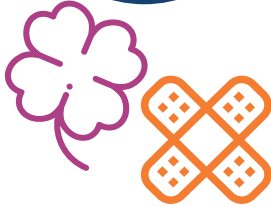
strict conditions on diversion from the criminal justice system

is found in this region and includes measures to respond to situations where the perpetrator fails to comply with the conditions.



Good practice : range of options for receiving restitution and compensation

ensures women have access to prompt and fair redress. Good practices include considering restitution as part of sentencing and having state-funded compensation schemes.



8.2 Rehabilitation and treatment programmes

Whichever way the perpetrator comes to rehabilitation treatment centre programmes, there are a number of good practices with respect to how such programmes are developed. For instance, such programmes should be considered and delivered only as part of an integrated response to violence against women; services for victims should be prioritised over programmes for perpetrators when funds are limited; and assessments should be done in order to ensure that there will be no risk to the safety of the victim.



Good practice : gender-sensitive rehabilitation treatment programmes that are committed to working within a gendered structural analysis of violence against women as opposed to a simplistic or individualised anger management paradigm is considered a good practice.



Good practice : programmes where perpetrators take responsibility for their actions and developing and implementing such programmes in close coordination with services to survivors are considered good practices. Also, addressing and questioning notions of masculinity can ensure that perpetrators take responsibility for their actions and are positive agents of change.

SUMMARY OF KEY ELEMENTS FOR GOOD PRACTICES

This report explores five key elements found in many of the good practices existing in Southeast Asia and moves the discussion of good practices beyond the specific focus of the criminal justice chain. Many of these key elements are reflected in the guiding principles of the Updated Model Strategies and Practical Measures, that urge states when introducing model strategies and practical measures to be guided by the need to ensure a comprehensive, coordinated, systematic and sustained approach that promotes the involvement and participation of all relevant sectors of government and civil society and other stakeholders. These guiding principles also speak to committing adequate and sustained resources for model strategies and practical measures that take into account the varying needs of women subjected to violence and to develop monitoring mechanisms to ensure effective implementation and oversight.

ELEMENT

1



COMPREHENSIVE LEGAL AND POLICY FRAMEWORK

A supportive comprehensive legal and policy framework is an important element for the effective implementation of many of the good practices found along the criminal justice continuum.



1.1 A comprehensive legal framework on violence against women

A number of features are discussed under this section:

- ❖ Laws are guided by the principles of a human rights-based and women-centred approach and ensuring offender accountability
- ❖ Laws promote the principles of gender equality
- ❖ All forms of violence against women, all legal domains (criminal, civil, family administrative) and all required services (policing, justice, health, social services) are covered
- ❖ Law reform processes that promote a broad consultation with all relevant stakeholders
- ❖ Evidence-based research to inform law reform

1.2 A comprehensive policy framework on violence against women

A number of features are discussed under this section:

- ❖ National, high-level, multi-sectoral policies on violence against women
- ❖ Inter-agency policies on violence against women
- ❖ Criminal justice institutional policies on violence against women

ELEMENT

2



COORDINATED AND MULTI-SECTOR RESPONSES

Violence against women cannot be addressed by the criminal justice system alone. It has become accepted wisdom that a coordinated multi-sector response to gender-based violence is a foundational element in preventing gender-based violence and addressing the persistent impunity. This section reviews how coordination principles reflect many of the criteria used to define 'good practice', including promoting a human rights-based and victim-centred approach, offender accountability, oversight and accountability, and effective uses of resources that contribute to sustainability.

2.1 Coordination mechanisms and referral pathways

A number of features are discussed under this section:

- ❖ Coordinated community response mechanisms – summarises the critical elements for such a mechanism
- ❖ Referral pathways and inter-agency guidelines

2.2 Coordination structures

A number of features are discussed under this section:

- ❖ One Stop Models and the benefits of this structure
- ❖ Victim centres with extensive networking

ELEMENT

3



SPECIALISATION AND CAPACITY BUILDING

Building the capacity of all criminal justice providers to apply the laws of their state in an appropriate and gender-sensitive manner and using specialised expertise at various stages of the criminal justice system have been recognised as good practices towards a gender-responsive criminal justice system.

3.1 Specialisation within criminal justice agencies

This section reviews how specialisation reflects many of the criteria used to define ‘good practice’, including promoting a human rights-based and victim-centred approach, offender accountability, and coordination. A number of features are discussed under this section:

- ❖ Recruiting specialists
- ❖ Increasing the role of women officers as specialists

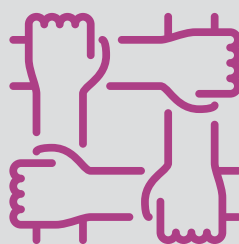
3.2 Capacity building - training of all criminal justice providers

This section summarises features of effective training. A number of features are discussed under this section:

- ❖ Mandatory regular training
- ❖ Close cooperation with women’s groups
- ❖ Broad coverage of topics
- ❖ Training support by development of tools and guidelines

ELEMENT

4



PARTNERSHIPS WITH NGOS

Partnering with women’s rights groups and civil society organisations is seen as a key element in many of the good practices. Non-governmental organisations provide the perspective of women who have experienced violence and can explain the dynamics of violence against women in professional terms and make connections between the needs of victims and the duties of criminal justice providers.

ELEMENT

5



MONITORING AND ACCOUNTABILITY

Oversight and monitoring mechanisms, both governmental and civil society based, are vital to ensuring an effective gender-responsive criminal justice system. Actors must be held accountable, and statistics play an important role in identifying discrimination in practice.

5.1 Oversight and accountability

A number of features are discussed under this section:

- ❖ Oversight
- ❖ Codes of conduct
- ❖ Setting up avenues of complaint
- ❖ Civilian oversight



5.2 Monitoring and evaluation

This section summarises features of effective monitoring and evaluation. A number of features are discussed under this section:

- ❖ Establishing a monitoring mechanism
- ❖ Comprehensive and uniform data
- ❖ Monitoring the performance of the criminal justice system
- ❖ Victim satisfaction studies

RECOMMENDATIONS

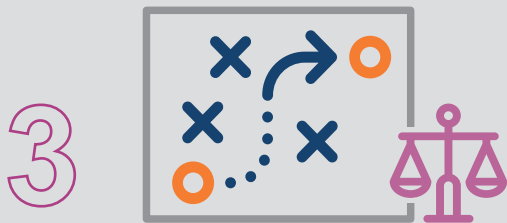
Recommendations for Southeast Asian States



Conduct situational and gender analysis of criminal justice systems



Establish coordination mechanisms



Develop or strengthen implementation plans for criminal justice systems to respond to VAW

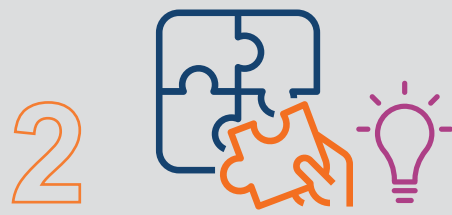


Monitoring and evaluating implementation

Recommendations for further research



Rigorous evaluations of existing good practices



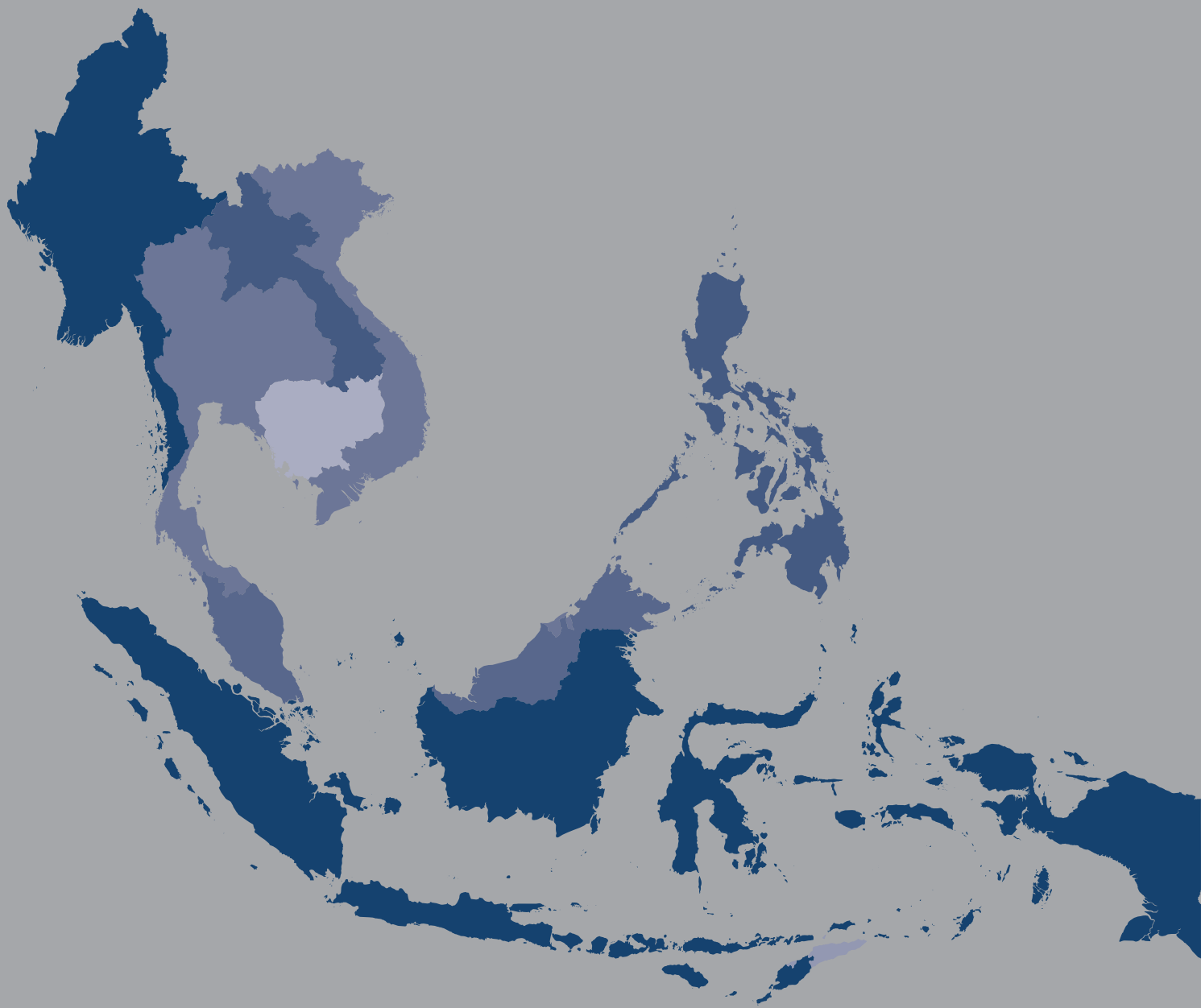
Filling the gaps in research



Incorporating the victims' perspective into research



Establishing research sharing platforms at ASEAN level



INTRODUCTION

In Southeast Asia, as across the globe, increasing attention has been given to the promotion of a comprehensive and multi-sectoral response to violence against women, including the need for gender-responsive criminal justice systems. There have been increased efforts to implement the international and regional standards calling for the elimination of violence against women that include the paramountcy of safety for victims, the empowerment of women and respect for the dignity of all persons while holding perpetrators accountable for the violence. States in the Southeast Asian region have introduced a number of practices over the last decades in order to establish positive conditions for women to engage with the criminal justice system. New efforts across Southeast Asia to improve the gender sensitivity and responsiveness of the criminal justice system have produced important innovations, such as One Stop Crisis Centres and women desks at local police stations.

However, violence against women remains highly prevalent, socially tolerated and largely unpunished crime.¹ The prevalence of violence against women in the Southeast Asian region is higher than the global average, with nearly thirty-eight per cent as compared to the global rate of thirty per cent of women experiencing violence in their lifetime.² High levels of cases, irrespective of whether these involve intimate partner violence, sexual violence, human trafficking or other forms of violence being experienced by women go unreported. In some parts of the world, it was found that as many as 80 per cent of women do not report the incidents, whether out of shame, fear of being stigmatised by family, community and the police or threat of further violence.³ When women actually do report the violence, many women view the response of the criminal justice system as being like a 'second assault'⁴ as a consequence of indifferent, insensitive or harsh treatment by the police officer, prosecutors and judges, where the violence is often minimised, dismissed or blamed on the victims. Women victims of violence in general appear to have a profound lack of confidence and trust in the criminal justice institutions, which unfortunately is not unfounded, as a study from the Asia and Pacific region found that the vast majority of perpetrators of violence against women face no legal consequences.⁵

Recognising that many challenges remain, and aware that countries in Southeast Asia are looking for practical solutions and innovative measures that can improve the criminal justice response to

1 UN Secretary-General. 'In-depth study on all forms of violence against women'. 2006. A/61/122/Add.1. United Nations Population Fund, United Nations Development Fund for Women and Office of the Special Adviser on Gender Issues and Advancement of Women. 'Combating Gender-Based Violence: A Key to Achieving the MDGs' 2005.

2 WHO. 'Global and regional estimates of violence against women: prevalence partner violence and non-partner sexual violence'. 2013.

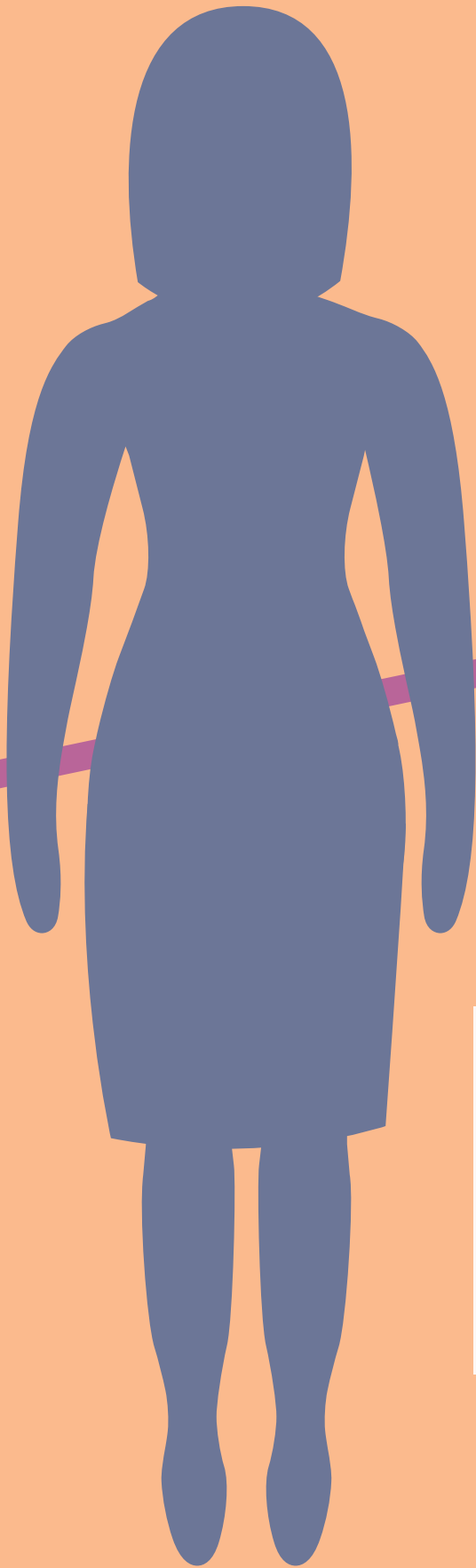
3 Johnson, H. Ollus, N. and Nevala, S. 'Violence Against Women: An International Perspective'. European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). 2008.

4 Kelly, L. 'Promising Practices Addressing Sexual Violence' UN Expert Group Meeting Violence against women: Good practices in combating and eliminating violence against women. 2005. <<http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/kelly.sexualviolence.pdf>>

5 Fulu, E., Warner, X., Midema, S., Jewkes, R., Roselli, T. and Lang, J. 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific'. UN Women, UNFPA, UNDP and UN Volunteers. 2013.

violence against women, the Thailand Institute of Justice (TIJ) conducted this research in order to identify good practices and model measures being used in Southeast Asian countries that could be implemented in other Southeast Asian countries in order to support the State and its criminal justice institutions in their mandate to incorporate gender sensitivity into their criminal justice systems. Using the international instrument - the United Nations Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice - as a blueprint and guiding framework, this research reviews the practices of various Southeast Asian countries, drawing from the lessons learned and problem-solving techniques that can enhance every stage of the criminal justice process for women subjected to violence. The ultimate goal is to contribute to the elimination of violence against women in Southeast Asia by enhancing women's access to a gender-responsive criminal justice system as well as to inspire other regions of the world. It is hoped that this research re-invigorates countries in this region to focus on this complex and challenging issue.

The TIJ has been a leading research institution in the Southeast Asia region in developing outcome-based research for criminal justice institutions to build their capacity to respond to crimes of violence against women. The government of Thailand was the lead sponsor for the review and updating of the UN Updated Model Strategies and Practical Measures which was adopted as an annex in a UN General Assembly resolution in 2010 (GA R/65/228, annex).



PART I:
**CONTEXT AND
BACKGROUND**

PART I: CONTEXT AND BACKGROUND

‘What is needed to address impunity is a change in culture, not just in the justice system, but across societies, such that ‘the word of a woman’ is no longer treated as less worthy of belief when what she speaks about is [gender-based] victimisation.’⁶

1. Background and objectives of the research

1.1 Background

Understanding what is meant by violence against women

Violence against women is the most widespread and socially tolerated form of human rights violations.⁷

It is a universal phenomenon in which women are affected by different forms of violence at different stages of their lives, both in their home and in the public sphere. It includes violence by intimate partners and family members, sexual violence, trafficking, forced prostitution, femicide, female genital mutilation and forced marriages, as well as denying a partner control over basic resources, battering, marital rape, dowry-related violence, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, and physical, sexual and psychological violence perpetrated or condoned by the State. The types of violence women experience and their evolution have become increasingly complex as seen by increasing rates of violence committed using information and communications technology (ICT), such as online harassment, cyber-bullying, stalking and distribution of denigrating images. In many societies, different forms of violence against women are some of the most prevalent crimes.⁸

Box 1: Defining violence against women

The definition of violence against women used in this report is from the 1993 UN Declaration on the Elimination of Violence against Women: ‘Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.’⁹ ‘Gender-based violence’ and ‘violence against women’ are terms that are often used interchangeably, since most gender-based violence is inflicted by men on women and girls. However, it is important to retain the ‘gender-based’ aspect of the concept as this highlights the fact that violence against women is an expression of power inequalities between women and men. Such violence is ‘directed against a woman because she is a woman or that affects women disproportionately.’¹⁰

Such violence is not only a traumatising experience for individual women, it also has an adverse impact on the stability of societies as a whole. As the Association of Southeast Asian Nations Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA on EVAW) highlights, not only does violence against women have devastating short and long term physical, psychological and social effects on the victims, but such violence also limits women's access to, control over and ownership of resources and impedes the full development of their potential.¹¹ As such, gender-based violence is an obstacle to the social and economic development of communities and states. Violence against women is one of the most serious barriers to the achievement of equality between men and women and remains persistent to a large degree due to the continuing inequalities and power imbalances that have existed for centuries. Its pervasiveness suggests that it is deeply grounded in attitudes and behaviours. This also has implications for developing responses in order to address such violence. As noted by the ASEAN Committee on Women (ACW) Work Plan 2011-2015, such responses have been 'hampered by persistent resistances to and inadequacies in understanding how gender power relations and deeply rooted attitudes and perceptions of women and men operate to subordinate and discriminate women.'¹²

Box 2: From passive to active voice

Violence against women is often discussed in the passive voice, describing the phenomenon in terms of how many women were raped, battered, or trafficked rather than how many men raped, battered or trafficked women. As Jackson Katz suggests 'the term «violence against women» is problematic. It's a passive construction; there's no active agent in the sentence. It's a bad thing that happens to women, but when you look at the term 'violence against women', nobody is doing it to them. It just happens to them ... Men aren't even a part of it.'¹³

Source: Katz, Jackson

The response internationally and regionally

Violence against women is not a new problem, and it is one that all countries around the globe struggle to address. What has changed is the recognition that violence against women can no longer be seen as an inevitable part of family life, social interactions within the community or in contact with the state. It can no longer be justified or allowed to continue with impunity. At the global level, this recognition has led to the

6 Jan Jordan as cited in Kelly, L. 'Promising Practices addressing sexual violence' UN Expert Group Meeting Violence against women: Good practices in combating and eliminating violence against women. 2005. <<http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/kelly.sexualviolence.pdf>>

7 United Nations Population Fund, United Nations Development Fund for Women and Office of the Special Adviser on Gender Issues and Advancement of Women. 'Combating Gender-Based Violence: A Key to Achieving the MDGs' 2005.

8 UN Secretary-General. 'In-depth study on all forms of violence against women'. 2006. A/61/122/Add.1.

9 UN General Assembly. 'Declaration on the Elimination of Violence against Women'. 20 December 1993. A/RES/48/104.Article 1.

10 UN Committee on the Elimination of Discrimination against Women (CEDAW). 'CEDAW General Recommendation No. 19: Violence against women' 1992.

11 The ASEAN Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA on EVAW). <http://www.asean.org/storage/images/2015/November/27th-summit/ASCC_documents/ASEAN%20Regional%20Plan%20of%20Action%20on%20Elimination%20of%20Violence%20Against%20WomenAdopted.pdf>

12 ASEAN Committee on Women (ACW) Work Plan 2011-2015. <<http://www.asean.org/storage/images/2012/publications/ACW%20Work%20Plan%202011-2015.pdf>>

13 The quote from Jackson Katz is cited in Zarya, V. 'We talk about women being raped, not men raping women: Meet the man behind the viral quote' Fortune. October 18, 2017. <<http://fortune.com/2017/10/18/rape-viral-quote-twitter-weinstein/>>

articulation of the international due diligence obligation requiring States to prevent, protect and provide redress, along with the obligation to prosecute and punish. It explicitly calls on States to adapt a holistic, comprehensive and multi-sectoral response and to take a wide range of vigorous measures, including social, economic and legal measures, in preventing and combating violence against women.

At the regional level, the Member States of ASEAN have confirmed the importance of addressing violence against women through the adoption of the 2013 Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN¹⁴ and an Action Plan which includes directives to strengthen a holistic, multi-disciplinary approach.

The importance of a quality criminal justice response

Appreciating that addressing violence against women requires comprehensive and coordinated efforts by different sectors and actors, this research focuses on efforts within the criminal justice system to protect, empower and provide justice to women while holding the men who perpetuate such violence accountable. In framing this research, it is recognised that criminalisation and establishing fair criminal justice procedures for victims should be only one aspect of state responses to gendered violence and should be 'situated within a broader agenda for structural change and an improvement of the social, economic and political conditions that allow for gendered violence in the first place.'¹⁵ Furthermore, while appreciating that criminal justice approaches to violence against women can be fraught with complications, set-backs and challenges, the research focuses on how to improve criminal justice systems to be more gender-responsive and provide procedural justice for victims, and not on whether it should exist as an option for women subjected to violence. Engaging the criminal justice sector to end violence against women 'calls for social and legal recognition of the harms of this expression of gender inequality and privatised gender domination and is an expansion of legal remedies available to end it' and shifts the focus on those responsible for the violence.¹⁶



[As a staff member of a women's NGO] I also struggle with this idea whether women make an effort to make women [victims] aware that [reporting a crime] is an option for them to do that. I don't think we do that. I mean even us at the hotline, our automatic option is to say Protection Order but not to say **“would you like to prosecute your husband?” It should be the survivor choosing not to do that rather than not having that option. It is not so empowering to know that you can't prosecute somebody.**

NGO staff member from Singapore.



¹⁴ ASEAN. Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN <http://www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW_violenceagainstchildren.pdf>

¹⁵ Randall, M. and Venkatesh, V. 'Why sexual assault in intimate relationships must be criminalized as required by international human rights law: A response to the symposium comment'. *AJIL Unbound* 342. 2016, p. 343.

¹⁶ Randall and Venkatesh. 2016, p. 345.

Box 3: What is meant by ‘gender-responsive criminal justice’?

Gender-responsive criminal justice means ensuring that the laws, the criminal justice institutions, the criminal justice processes and the criminal justice outcomes do not discriminate against anyone on the basis of gender. It necessitates taking a gender perspective on the criminal law itself, as well as an assessment of access and obstacles to the criminal justice procedures available for women and men and adopting gender sensitive strategies for protecting victims and promoting access to criminal justice. Gender-responsive criminal justice means understanding the interrelationship between gender and crime and how women and men are impacted differently by crime and violence. Global studies generally find that males are more often the victims of homicides and assaults, apart from sexual assault of which women are most often the victims.¹⁷ However, women are more likely to experience violence and abuse inside the private domestic sphere, perpetrated by someone they know, often by their own partner. The perpetrators of violence whether it is violence against men or against women are predominately male. A gender-responsive criminal justice system is one that gives confidence to women to report violence and, once they do report, provides an effective response to reduce risks of further harm, to provide an effective remedy and to provide support and treatment with dignity throughout the criminal justice chain.

Criminal justice systems are a crucial avenue for seeking state accountability and ending impunity. At the international level, this appreciation has led to UN Member States responding to the challenges of the criminal justice response by adopting in 2010 the United Nations Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, a document that suggests a series of measures which can be taken to improve law and processes for dealing with incidents of violence.¹⁸ At the regional and country level, the countries in Southeast Asia have introduced a number of good practices and innovative interventions over the past decades in order to improve the criminal justice response for women subjected to violence. There has been more focus recently on criminal justice strategies for holding perpetrators accountable while securing the safety and dignity of victims. While criminal justice systems are systems-centred, there have been more calls for victim-centred approaches to address domestic and sexual violence cases and to consider the impact of each decision made during the criminal justice processes on the victim’s safety and well-being at all times. Criminal laws have been adopted, policies have been instituted and specialised criminal justice services have been expanded to better assist victims of violence.

More work needs to be done

Efforts to end violence against women through the criminal justice system still have a long way to go in the region. Despite the fact that much work has already been undertaken by states to improve the criminal justice response, such violence continues to persist and remains one of the most under-reported crimes and least likely to end in conviction. The phenomenon of victim-blaming and criminal justice practices based on myths and gender stereotypes contribute to secondary victimisation. As one report noted, the ‘landscape of gender-based violence has been transformed [but] rather than there being a dramatic

¹⁷ UNODC. ‘Global Study on Homicide’ 2013; Mahony, T.H. ‘Women and the Criminal Justice System’. 2011.

¹⁸ UN General Assembly, Updated Model Strategies and Practical Measures to Eliminate Violence against Women in the Field of Crime Prevention and Criminal Justice, General Assembly Resolution 65/228, annex.

reduction in violence against women, [...] the challenges have become more complex, the resistance to change deeper, the backlash against the empowerment of women more blatant and the method used to uphold the status quo more sophisticated and insidious.¹⁹

Box 4: Investigating and prosecuting cases of violence against women pose unique challenges

It has to be recognised that these cases are some of the most challenging to investigate and prosecute and to provide protection for the victims. The trauma and impact of victimisation, the stigmatisation and shame experienced by survivors, the nature of the intimate relationship between the victim and the perpetrator, the financial and emotional dependency of the victim on the perpetrator, and the various societal pressures on the victim to avoid prosecution and the victim's concern for her safety can make such cases much more difficult to investigate and prosecute.

Taking stock of good practices in the criminal justice sector

Over the years there have been a number of initiatives that have examined good practices in the elimination of violence against women.²⁰ In Southeast Asia, the Ministry of Women, Family and Community Development in Malaysia has produced a document listing good practices on eliminating violence against women and children.²¹ However, this is the first attempt at taking stock of good practices in Southeast Asia with a criminal justice focus. Recognising the variety of different legal traditions and cultures within the region, the 'good practices' described in this report focus on such practices that 'lead to actual change, contribute to a policy environment that are more conducive to gender equality and/or has broken new ground in non-traditional areas for women'²² and comply with international standards. Practices include laws, policies and implementation activities.

It is recognised that a good practice that is working in one country may fail to work in another setting due to different legal traditions, cultural differences, the structure of society and available resources. Furthermore, a good practice that works for one particular group of women may not work for other groups. However, this consideration should not prevent states and relevant stakeholders from looking for solutions and some of the practices presented in this report could inspire other countries in their efforts against violence.

19 UNIFEM. 'Not a Minute More: Ending Violence against Women'. 2003, p. 12.

20 Such initiatives have included: UN Women's Virtual Knowledge Centre; OSCE. 'Bringing Security Home: Combatting Violence against Women in the OSCE Region. A Compilation of Good Practices' 2009; UN Secretary-General. 'Ending Violence Against Women: From Words to Action'. 2006. < <http://www.un.org/womenwatch/daw/vaw/v-sg-study.htm>>; DAW and UNODC. 'Good Practices in Combating and Eliminating Violence Against Women: Report of the Expert Group Meeting'. 17-20 May 2005; UNIFEM. 'Not a Minute More: Ending Violence Against Women'. 2003; and International Centre for Criminal Law Reform and Criminal Justice Policy. 'Resource Manual and Compendium on model strategies and practical measures'. 1999.

21 Ministry of Women, Family and Community Development, Malaysia. 'Good Practices: Eliminating Violence against Women and Children. Documentation of Good Practices in ASEAN Member States on the Elimination of Violence against Women and Children.' Undated.

22 Coomaraswamy, Radhika, 'International, regional and national developments in the area of violence against women 1994-2003. Report of the Special Rapporteur on violence against women, its causes and consequences', United Nations, Economic and Social, Council Commission on Human Rights, 2003. E/CN.4/2003/75/Add.1.

1.2 Objective and scope of the research

The overall objective of this research is to inform and advance the discussion on how to ensure that women subjected to violence in Southeast Asia have access to gender-responsive criminal justice processes and obtain effective justice, protection and redress. This research does not involve a detailed review or assessment of each Southeast Asian country's criminal justice system. Rather the purpose is to provide examples of good practices from the various countries in Southeast Asia using the international and regional standards as a framework. The intent is to inspire the sharing of good practices and lessons learned within the region.

The scope of this research is to explore good practices used in the criminal justice sector to respond to violence against women in Southeast Asia.



Good practice can be laws, policies, procedures, programmes and practices to ensure implementation. This includes institutional infrastructure, resource and workforce capacity practices of criminal justice actors and other actors peripheral to the criminal justice system, such as civil society organisations.



Good practice should be available, accessible, acceptable and adaptable to all women living in a country.

The focus of this report is primarily on the **criminal justice system**, examining the practices used along the criminal justice chain, from prevention, early detection and reporting to ensuring appropriate remedies and protection. Criminal justice actors include judges, prosecutors, police, lawyers, legal aid, court administration, victim support workers (both government and NGO-based).

The scope of the report is not restricted to any one form of **violence against women**. However, it should be noted that the majority of good practices and information from the ten countries predominantly focused on domestic violence and sexual violence, as well as on human trafficking involving women. This is not unusual, since intimate partner violence and sexual violence are considered the two most common forms of violence against women. The research focuses on adults who identify as women.

The ten countries belonging to the Association of Southeast Asian Nations are studied. These countries are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.



Target audience

The primary target audience of this report is state actors in Southeast Asia who have an obligation to ensure a gender-responsive criminal justice system for women subjected to violence. These include:

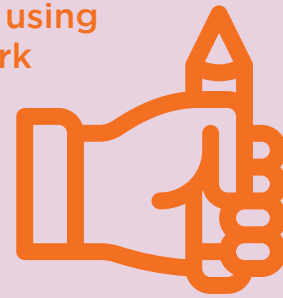
- ❖ Legislative drafters and policy makers in the government.
- ❖ Criminal justice institutions, including the police, prosecution, criminal courts, legal aid offices, forensic examiners and victim services.

The report is also aimed at non-state actors who seek to advance the right to access gender-responsive criminal justice. These include:

- ❖ Academics, including law students, studying these issues.
- ❖ Civil society organisations engaged in providing services to women survivors of violence and advocating for a gender-responsive criminal justice system.
- ❖ Women survivors of gender-based violence.

Criteria used in identifying good practices – using the Updated Model Strategies as a framework

There has been a movement away from labelling a practice as a ‘best practice’ in addressing violence against women, and looking instead at promising, innovative or good approaches. Not only are there challenges in proclaiming certain practices as better than others, there are no agreed-upon criteria of what constitutes such practices.²³ Characteristics of ‘good practices’ often include being seen as innovative (i.e. presenting creative solutions to a common problem), sustainable and effective (i.e. having demonstrable effect on reducing violence against women or lessening its impact over the long term).²⁴ Practices have also been described as good when ‘they have the potential for replication and can serve as inspiration for new initiatives in other context.’²⁵ Specifically focusing on good practices in advancing human rights, the Raoul Wallenberg Institute defines such a practice as one that ‘represents significant steps toward the realisation of the rights in question and that demonstrates the state’s willingness and commitment to the full implementation of international human rights standards.’²⁶



23 OSCE. 2009.

24 OSCE. 2009.

25 Raoul Wallenberg Institute of Human Rights and Humanitarian Law and International Legal Assistance Consortium. ‘Gender Justice Best Practices’. 2007, p. 13.

26 Raoul Wallenberg. 2007. p. 12.

27 United Nations Office on Drugs and Crime. ‘Strengthening Crime Prevention and Criminal Justice Response to Violence against Women’. 2014. <https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf>

Box 5: Note of caution about the terminology

This report uses the term ‘good practice’ or ‘innovative’ with a note of caution that this might be dependent on the local context in which it is being used, such as resources, government commitment to gender equality, and often on the relationship between state agents and civil society or non-governmental organisations. This is particularly more challenging when comparing practices in the criminal justice system in Southeast Asia due to the varying legal traditions and cultures, but also because there has been little evaluation or long-term assessments of specific interventions. Therefore, using the term ‘good practice’ does not imply that a specific practice is the best solution in all contexts nor that the practice is perfect, but rather that it is part of a process towards realising gender-responsive justice for women subjected to violence.

To determine what constitutes a good practice in the criminal justice sector in responding to violence against women, this report is guided by the relevant international standards and studies, particularly the **Updated Model Strategies and Practical Measures to Eliminate Violence against Women in the Field of Crime Prevention and Criminal Justice** and the **UNODC’s Blueprint for Action: An implementation plan for criminal justice systems to prevent and respond to violence against women**.²⁷ From these documents, the following criteria have been developed to determine good practice.

Box 6: Guiding principles to determine good practices



Human rights-based. An aspect of good practices is that these address the wider dynamics of gender inequality which create gender-specific vulnerabilities, such as economic and legal dependency, and counter the negative gender stereotyping that have traditionally minimised VAW. This includes practices that ensure women can enjoy and exercise their human rights, including being protected from violence and the threat of violence and being treated with dignity and respect as they go through the criminal justice process, while ensuring the defendant’s right to a fair trial.



Victim-centred. An essential feature of good practices is that they put the needs of the victims at the core of any intervention, and they empower women. This includes criminal justice practices that prioritise issues of the physical and psychological safety of the victim; assist victims in their engagement with the criminal justice process rather than holding them responsible for their often well-justified ‘reluctance’ to cooperate with the criminal justice system; counter the persistent climate of tolerance and victim-blaming; and reduce experiences of secondary victimisation.



Ensure offender accountability. An important characteristic of good criminal justice practices is that they contribute to effective action to hold the perpetrators accountable. Such practices include actions that penalise perpetrators of violence; encourage reporting; maximise the victim's cooperation with the criminal justice process; and place the primary onus of investigation and prosecution on the state criminal justice agencies.



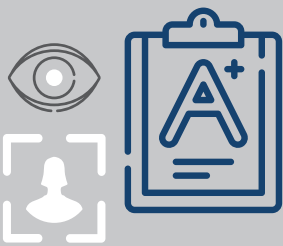
Coordinated approaches. A common feature of good practices is the promotion of multi-agency cooperative approaches that coordinate a wide range of actors. Such practices seek to minimise the silo effect of criminal justice agencies' mandates and promote a systematic and sustained approach of working together by a broad range of actors and services at all levels (the silo effect refers to a lack of information flow between these groups.)



Promote the involvement of all key stakeholders. Good practices are those that have buy-in and develop partnerships across the relevant criminal justice agencies (e.g. senior leadership and frontline), other relevant government departments and civil society groups, including women' and survivor's groups.



Sustained and adequate resources. Responding to the deeply entrenched nature of VAW cannot be effectively addressed by short-term funding. A feature of good practices is funding that ensures the sustainability of action.



Monitor and provide oversight for evidence-based approaches. All effective practices require monitoring and evaluation to show the progress and impact achieved. Practices need to be underpinned by accurate empirical data about the scope of VAW, its causes and its consequences, and how effective the criminal justice system is in holding offenders accountable and meeting the needs of victims.



Take into account the varying needs of different groups of women and girls subjected to violence. Such practices appreciate that victims of VAW do not constitute a homogenous group. They can face multiple forms of discrimination which can be based on nationality, ethnicity, religion or language in addition to gender. Some victims may be part of specific highly vulnerable groups of women (e.g. indigenous groups, migrants, refugees, rural or remote residents, homeless persons, women with disabilities, the elderly, sex workers, etc.).



What we have done is that we collaborated with [government and non-governmental organisations], established by women police and our university [...] We did research and advocacy to set up what we call an integrated criminal justice system. **What we would like to have is: if the victim goes to the hospital, there is already a police officer available, an attorney and lawyer. A “one gate” service for the domestic violence cases. And the court has to provide a kind of women’s court but not what we know as in Malaysia. But the real women’s court. [...] All the legal officers, officials, judges, attorneys and police officers and lawyers, should have certificates from a kind of training to guarantee that they have knowledge and a perspective on gender equality.** And also in the Supreme Court, we would like to have certain divisions especially addressing women’s cases. Actually, the ideal is that we have certain family courts for women, but it is not possible because of our judicial system so we would try to have a kind of training for judges among the courts.²⁸

An Indonesian law professor describes what she views as good practices in the field of criminal justice.



Definitions used within this report

Terms used for women subjected to violence. This report uses the term ‘victim’ to refer to women who report gender-based violence, given that it reflects the terminology used in the legal process. When discussing women who have experienced violence outside the context of the criminal justice system, the term ‘survivor’ is used to reflect the agency of these women. The term ‘complainant’ is used to indicate where the woman has made a complaint of a crime which has not as yet been proven in court.

Terms used for perpetrators of violence. The term ‘suspect’ is used to describe the man who is alleged to have committed a crime or crimes involving violence against women. The term ‘accused’ is used to describe the man who has been charged with a crime. When discussing the abuser in context outside the justice system, the term ‘perpetrator’ is used to reflect those who engage in violence against women.

The report will primarily use the term ‘violence against women’ but also ‘gender-based violence’. While gender-based violence is not a synonym for violence against women, it is a term that is often used since women are the primary targets of gender-based violence.

The report also distinguishes between intimate partners and non-partners. ‘Intimate partners’ are persons in a close relationship that may be characterised by physical contact, an emotional connection

²⁸ Interview with an Indonesian law professor, conducted during the TIJ research project ‘Women as Justice Makers’.

and a sexual relationship as a couple, often with knowledge about each other's life. However, the relationship does not necessarily include all of these characteristics. An intimate partner relationship may or may not involve cohabitation and includes current or former relationships. Different types of intimate partners include: spouses (married spouses, common-law/de facto partners, domestic partners); boyfriends and girlfriends; dating partners; recurrent sexual partners; and ex-spouses or boyfriends. 'Non-partners' are anyone who are not partners and include: strangers, acquaintances, friends, colleagues, peers, teachers, neighbours and other family members.

1.3 Methodology

The methodology was designed to be outcome-focused, concentrating on the goal of providing information on good practices in criminal justice sectors of Southeast Asia which can inform other countries in the region in moving towards ensuring gender-responsive criminal justice for women subjected to violence.

Various inputs informed the substance of this report. This research involved the following three main components:

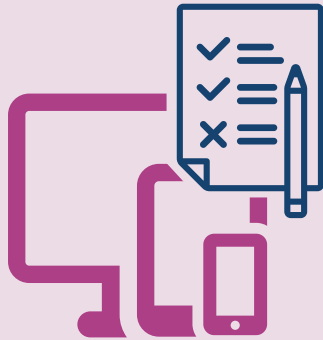


The literature review

The literature review focused on criminal justice responses to violence against women in the ten Southeast Asian countries. This consisted of a desk review of the literature, including secondary sources and involved conducting academic database and Internet searches of English-based sources. The scope of this literature review was three-fold:

- ❖ A review of the relevant international and regional standards and norms. This included binding and non-binding standards, namely treaties, general comments, concluding observations and soft law instruments.
- ❖ An exploration of the literature from Southeast Asia with the purpose of identifying the realities faced by women in accessing criminal justice systems.
- ❖ A review of innovative responses and practices that have been developed and implemented across Southeast Asia in the area of violence against women and criminal justice responses. This included reviewing the laws, national action plans, state reports and submissions to international bodies, academic journals and civil society reports.

This literature review contributed to the drafting of the research report and informed the selection of the six countries in Southeast Asia for the field visits to get a better sense of why the identified good practices are working, and to analyse elements so that principles can be transferred to other countries with different legal traditions.



The electronic survey

A qualitative electronic survey was conducted targeting criminal justice stakeholders in the ten Southeast Asian countries. The survey was carried out by administering a questionnaire to a sample of respondents from amongst the criminal justice actors and civil society and non-government organisations which provide criminal justice services or justice-related services to victims of violence against women in the region. The survey gathered

information about existing State practices in terms of how the laws criminalised different forms of violence against women; specific legal provisions and institutional practices at the reporting and investigation stages, pre-trial and trial stages; and challenges faced by criminal justice providers and victims of violence against women. The survey questionnaire was distributed to more than 194 individuals in the ten Southeast Asian countries. A total of 27 respondents filled and returned the questionnaire. Responses were received from all but one country (Brunei Darussalam) and the respondents included judges, prosecutors, police, legal aid providers, lawyers, law professors and NGO and UN representatives.

The field visits

The budget and timeframe of this research project allowed for field visits to six selected countries in Southeast Asia, namely: Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam, to explore in further detail good practices that have been identified.





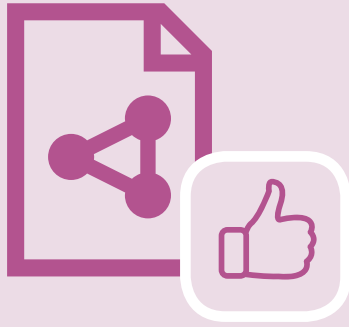
Limitations

Level of detail and accuracy of each country's situation. The scope of the research, given the timeframe and resources, was not to conduct a full assessment of each of the ten countries in terms of how the countries are meeting their international and regional obligations. Rather its aim is to show examples of good practices from the countries' laws, policies and practices that were available in English, from a search of secondary sources and provided to the researchers during the field studies to six of the countries. This report does not claim to provide a comprehensive description of each country's criminal justice response to cases involving violence against women.

Timeframe and resource limitation. The budget allowed travel to up to six countries in the region for field visits. Again, the aim was not to establish the precise situation in those countries, but to find enough information to provide good examples to inspire and provide guidance to other countries in the region. The level of detail gathered in these field visits varied from country to country due to the availability of criminal justice stakeholders interviewed and information received from those interviewees.

Language limitation. The language barrier and limitations to accessing secondary sources were key limitations. The research team members had the capacity to review materials in English and Thai. The budget allowed for a small amount of translation, which was mainly used to translate the survey questionnaire and responses into Khmer, Bahasa, Burmese, Thai and Vietnamese. This left a smaller amount for translation of a few key materials identified during the field visits, which limited the review of some of the material collected.

Conceptual challenges. This study uses concepts as understood in international law and global studies and tools, but it recognises that these are understood slightly differently in the countries examined. There are different legal qualifications and procedures depending on the legal traditions in each country, so this creates a challenge in any comparative study.



The framework developed for presenting the good practices

Given the variety of legal traditions in Southeast Asia (common law systems/adversarial, civil law systems/inquisitorial, religion-based systems/Sharia law, plural justice systems) resulting in different traditions with respect to laws and procedures, as well as the diversity of mandates and tasks of the criminal justice actors, it was decided to use a framework that broadly defines stages in the criminal justice chain. In addition to the

criminal justice chain, there are also a number of practices that could be said to generally support an enabling environment to ensure a gender-responsive criminal justice process, including laws and policies; workforce capacity such as training; institutional infrastructure such as specialised units at police stations, prosecution offices and specialised courts; and oversight and monitoring. These practices are included along the criminal justice continuum in addition to those that cross a number of the stages and are seen as key elements.

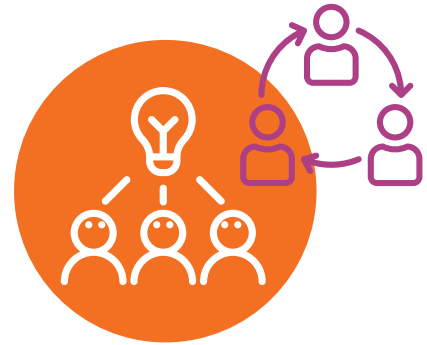
It was decided that the good practices would be grouped according to which phase of the criminal justice system they primarily apply to, rather than according to the type of violence they address. This procedure was followed, because even though a practice might address one particular form of violence, such as intimate partner violence, many of these good approaches target the root cause that underlie all forms of violence against women and address barriers many women face in accessing the criminal justice system.

Clear commonalities for all victims of violence are the need to feel safe and protected and the importance of procedural justice, where victims have the opportunity to be heard, feel that they have been assisted and treated with respect by criminal justice providers, and understand and trust the justice they receive. Nevertheless, at times the type of violence is highlighted when a specific practice has a narrow focus. However, even the grouping by criminal justice phase has its challenges, since violence against women requires a multi-faceted and multi-level approach and many good practices rely on and implicate others. An example is the implementation of pro-arrest policies which are often introduced to counter the historical minimising of domestic violence by police. If such practices are introduced without ensuring sufficient protection and support measures, a pro-arrest policy might put the victim at greater risk when the perpetrator is released.

Diagram 1: Criminal justice continuum and key elements



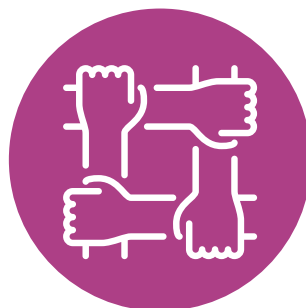
1. Comprehensive legal and policy framework



2. Coordinated and multi-sector response



3. Specialisation and capacity building



4. Partnerships with NGOs



5. Accountability and monitoring

1.4 Structure of the report

Part I. Context and background sets out the background, objective and methodology for the research. It presents the framework of criteria that will be used to determine good practices and reviews the international norms and standards related to a criminal justice response to violence against women. It also provides an overview of the realities women subjected to violence face in Southeast Asia.

Part II: A gender-responsive criminal justice continuum – Good practices from Southeast Asia looks at the good practices and innovative responses by Southeast Asian countries in addressing the challenges in the criminal justice sector. It presents the good practices following each step of the criminal justice chain (i.e. crime prevention and early detection, initial contact and reporting, investigation, pre-trial processes, trial processes and sentencing and correction), as well as steps that need to be considered throughout the criminal justice continuum (i.e. safety and protection, and victim support and assistance).

Part III: Five key elements for good practices in Southeast Asia explores five elements found in many of the good practices existing in Southeast Asia: practices backed by comprehensive legal and policy frameworks; practices that promote a coordinated and multi-sector response; specialisation and capacity-building; partnerships with non-government organisations; and monitoring and accountability.

Finally, the **Conclusion and recommendations** summarises the main recommendations on how these good practices can inform and improve the region's response.

2. States' obligation to ensure a gender-responsive criminal justice system – the international and regional legal framework

2.1 The international and regional human rights framework

Interdependence between violence against women and the enjoyment of human rights

Ending violence against women is a demand for legal equality and autonomy for women, rights that are enshrined in international human rights law. All women have the right to non-discrimination and equality, equality before the law, right to life, right to be free from torture and inhuman or degrading treatment, right to security and liberty of persons, right to equality in the family, and judicial rights.²⁹ The UN Committee on the Elimination of Discrimination against Women, which monitors the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in its General Recommendation No. 19 further confirms women's right to live free of violence and free of the fear of violence.³⁰

²⁹ Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights.

³⁰ UN Committee on the Elimination of Discrimination against Women (CEDAW). 'CEDAW General Recommendation No. 19: Violence against women' 1992.

Box 7: Southeast Asian countries and their international and regional commitments

Internationally

All of the countries in the Southeast Asian region have ratified or acceded to the CEDAW and agree to be guided by CEDAW General Recommendation No. 19 on violence against women and No. 33 on women's access to justice. The Philippines was the first of the ten countries to ratify CEDAW, in 1981, followed in the next decade by Lao PDR, Viet Nam, Indonesia, and Thailand. Cambodia, Malaysia, Singapore and Myanmar became State Parties in the 1990s, while Brunei Darussalam acceded in 2006.³¹ As Members States of the United Nations, all the Southeast Asian countries have participated in the adoption of a number of relevant declarations and resolutions on responding to violence against women, such as the 1993 Declaration on the Elimination of Violence against Women; the 1994 Beijing Declaration and Platform for Action; the 2010 Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice; and the Commission on the Status of Women 57th Session (CSW57) Agreed Conclusions.

Regionally

All the countries in the Southeast Asian region are committed to the Association of Southeast Asian Nations (ASEAN) Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN. They have also signed onto the ASEAN Regional Plan of Action on Elimination of Violence against Women.

There is recognition of the interdependence and linkage between violence against women and the enjoyment of other rights and freedoms such as equality. This was reiterated by the recently agreed Sustainable Development Goals (SDGs). The SDGs recognise that 'gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world.'³² Violence against women is seen as a manifestation of systemic marginalisation of women throughout society. Therefore, Goal 5 of the SDGs is to eliminate all forms of violence against women and girls in the public and private spheres, including trafficking as well as sexual and other types of exploitation, and Goal 16 is to promote the rule of law and ensure equal access to justice for all. In other words, the struggle to eliminate violence against women is inexorably bound to the larger struggle for women's equal human rights within the family and society as a whole.

Regional commitments

At the regional level, the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN reaffirms the Southeast Asian countries' commitment to the rights of women. The Member States in ASEAN agreed to the ASEAN Regional Plan of Action on Elimination of Violence against Women, which covers the period 2016-2025 with the aim to accelerate the implementation of the ASEAN Declaration. It contains eight key actions, of which Action 3 specifically focuses on actions to enhance the legal framework, prosecution and justice systems.

³¹ See the United Nations Treaty Collection www.treaties.org

³² UN Sustainable Development Goals website. <<http://www.un.org/sustainabledevelopment/sustainable-development-goals/>>



Action 3 on Legal Framework, Prosecution and Justice System calls on States to:

- ❖ Review and amend laws, regulations, policies, practices and customs that perpetuate violence against women and any discriminatory practices which result in violence, including customary or religious laws, and any legislation which accepts the 'defence of honour' as a mitigating factor related to crimes against women and girls as well as female genital mutilation and honour killings.
- ❖ Whether in customary or religious law and the formal justice system, cases should be resolved with respect for the human rights of victims/survivors and in accordance with relevant international obligations on gender equality and international human rights standards.
- ❖ All duty-bearers in the justice sector are to be held accountable for guaranteeing the safety, protection and dignity of victims/survivors (national level).³³

2.2 The due diligence obligation

The international due diligence obligation holds States accountable for violence committed not only by the State or State actors but also by non-State actors. States are responsible for 'private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.'³⁴

The due diligence obligation requires a range of responses that include the obligation to prevent, protect and provide redress, along with the obligation to prosecute and punish.³⁵

Prevention includes measures to thwart the occurrence of violence against women. Good practices include legal education and legal literacy programmes and legal protection available through laws.

Protection focuses on keeping the victim safe from present harm and the re-occurrence of further violence as well as ensuring the victim receives adequate and timely services. Good practices include immediate protection measures, the provision of accessible services, and adequate training and sensitisation of police and other first responders.

Provision of redress and reparations refers to the state obligation for providing adequate redress and reparations for victims to address the harm or loss suffered by them.

Prosecution refers to the duty of exercising criminal jurisdiction over those responsible for the violence. Good practices include effective, prompt and thorough investigations, which allow the victims to take steps to stop the violence without fear of repercussions.

Punishment refers to the obligation of imposing adequate sanctions on perpetrators. Good practices should send a message that such violence will not be tolerated, should be capable of preventing recidivism, should rehabilitate the perpetrator and should denounce and deter violence against women.

The CEDAW Committee provides further guidance in its decisions and general recommendations as to what 'due diligence' means for States, and unmistakably links this obligation to the State's duty of

³³ The ASEAN Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA on EVAW).

³⁴ CEDAW Committee General Recommendation No 19.

³⁵ Due Diligence Project website. < www.duediligenceproejct.org >

providing gender-responsive criminal justice to women subjected to violence. This obligation requires States to adopt and implement legislative frameworks dealing with various forms of gender-based violence that provide for penal sanctions and civil remedies and adequate protection to all women following instances of all such violence.³⁶ This includes adopting specific legislative measures to protect women from Internet crime and misdemeanours.³⁷ The legal definitions of acts of gender-based violence and relevant evidentiary rules are not to be overly restrictive, inflexible or influenced by gender stereotypes.³⁸ **For instance, the CEDAW Committee noted that there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.**³⁹ Nor should criminal justice practices be guided by notions of what women should be or what they should have done when confronted with a situation of rape, based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence.⁴⁰ The CEDAW Committee has criticised situations where undue attention was paid to the fact that the woman and the alleged perpetrator knew each other, explaining that it indicates reliance on gender-based myths and misconceptions.⁴¹ The CEDAW Committee also considered it was good practice if governments consulted with women's groups and civil society organisations when developing legislation and policies in those areas.⁴²

Another aspect of due diligence is the obligation of States to carry out effective and gender-sensitive investigations, prosecutions and adjudication with a view to instigating criminal proceedings, bringing the perpetrator to criminal court and imposing appropriate penal sanctions.⁴³ Such legal procedures, including courtroom procedures and investigative processes, are to be responsive to the particular needs of survivors. This includes having in place effective measures to protect women against secondary victimisation in their interactions with law enforcement and judicial authorities, with consideration to establishing specialised gender units within law enforcement, penal and prosecution systems.⁴⁴ For example, the CEDAW Committee suggests improving the criminal justice response to domestic violence through recording of emergency calls, taking photographic evidence of destruction of property and signs of violence, and considering expert reports from doctors or social workers.⁴⁵ Furthermore, in order to encourage women to report crimes committed against them and to actively participate in criminal justice processes, supportive environments measures to prevent retaliation against women seeking recourse in the justice system need to be in place.⁴⁶

The CEDAW Committee specifies more practical guidance on how to enhance a gender-responsive criminal justice system. The Committee calls for States to develop protocols for police and health-care providers for the collection and preservation of forensic evidence in cases of violence against women,

36 CEDAW Committee General Recommendation 19, Paras. 24(b) and 24(t); CEDAW Committee General Recommendation 28, para. 34. See also, *Concluding comments of CEDAW Committee, for example: Myanmar, U.N. Doc CEDAW/C/MMR/CO/3, 7 November 2008, para. 23; Vietnam, U.N. Doc CEDAW/C/VNM/CO/6, 2 February 2007, para. 17; Cambodia, U.N. Doc CEDAW/C/KHM/CO/3, 25 January 2006, para. 16.*

37 CEDAW Committee General Recommendation 33, para. 51(e).

38 CEDAW Committee General Recommendation 33, para. 51(h). CEDAW, *VK v. Bulgaria, Communication No. 20/2008, 25 July 2011, paras. 9.9 and 9.11-9.16; CEDAW, Vertido v. Philippines, Communication No. 18/2008, 16 July 2010, paras. 8.5-8.9.*

39 CEDAW, *Karen Tayag Vertido v. Philippines, Communication No. 18/2008, 1 September 2010, para. 8.5.*

40 CEDAW, *Karen Tayag Vertido v. Philippines, Communication No. 18/2008, 1 September 2010, paras. 8.5-8.9.*

41 CEDAW, *Karen Tayag Vertido v. Philippines, Communication No. 18/2008, 1 September 2010, para. 8.6.*

42 CEDAW Committee General Recommendation 33, para. 51(d).

43 CEDAW Committee General Recommendation 19, paras. 24(b) and 24(t); CEDAW Committee General Recommendation 28, para. 34;

44 CEDAW Committee General Recommendation 33, para. 51(c).

45 CEDAW Committee General Recommendation 33, para. 51(i).

46 CEDAW Committee General Recommendation 33, para. 51(d).

and to train sufficient numbers of police and legal and forensic staff to competently conduct criminal investigations.⁴⁷ They also call on States to establish capacity-building programmes for judges, prosecutors, lawyers and law enforcement officials, including conducting gender-sensitive training and adopting codes of conduct and protocols for the police officer.⁴⁸ Furthermore, the CEDAW Committee suggests developing standard operating procedures and referral pathways to link security actors with service providers on gender-based violence, including one-stop shops offering medical, legal and psychosocial services for sexual violence survivors, multipurpose community centres that link immediate assistance to economic and social empowerment and reintegration, and mobile clinics.⁴⁹

2.3 The Updated Model Strategies

The international community has agreed to model strategies and practical measures that States could introduce to meet their international obligation of due diligence: the UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (hereinafter called 'Updated Model Strategies').⁵⁰ These have been further articulated in the UNODC Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women (hereinafter 'Blueprint')⁵¹ and the UN Inter-agency Essential Services Package for Women and Girls Subjected to Violence.⁵²

Box 8: A note about the Updated Model Strategies

The Updated Model Strategies was adopted by the General Assembly in 2010 and focuses on the criminal justice system while recognising that a holistic and multidisciplinary response is needed. It provides a series of broad recommendations covering substantive, procedural, and operational issues of the criminal justice system as well as calling for comprehensive, coordinated, and multidisciplinary responses. The Updated Model Strategies urge States to implement a series of comprehensive criminal justice measures that will provide a gender-responsive criminal justice response to violence against women.

The Updated Model Strategies and supporting global tools provide the analytical framework for discussing 'good practices' in providing gender-responsive criminal justice systems in Southeast Asia. While Part II of this report will summarise the relevant Updated Model Strategies provisions applicable at each stage of the criminal justice continuum, below are some of the broad requirements contained in that international instrument.

Criminal laws States should ensure that all forms of violence against women are criminalised and prohibited⁵³ and that criminal laws are comprehensive and effective in eliminating violence against women.⁵⁴ States should also remove any provision that allow or condone

47 CEDAW Committee General Recommendation 33, para. 51(k).

48 CEDAW Committee General Recommendation 30, para. 38.

49 CEDAW Committee General Recommendation 30, para. 38.

50 General Assembly resolution 65/228, annex.

51 Contained in UNODC. 'Strengthening Crime Prevention and Criminal Justice Response to Violence against Women'. 2014.

52 UN Women, UNFPA, WHO, UNDP and UNODC 'Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing'. 2015. <<http://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence>>

53 Article 14(b), Updated Model Strategies.

violence against women or increase the vulnerability or re-victimisation of women who have been subjected to violence.⁵⁵

Investigations The strategies provide that investigations should be carried out with a gender perspective, consider the specific vulnerabilities and the victims' needs, and use techniques that minimise intrusion into the lives of the victims while abiding by standards for the collection of evidence.⁵⁶

Investigations and prosecutions The strategies provide that investigations and prosecutions should be initiated ex officio (i.e. by virtue of one's office) and without delay by competent authorities.⁵⁷

Evidentiary rules The strategies indicate that evidentiary rules should be non-discriminatory, allow the admission of all relevant evidence and preclude the admissibility of the defence of 'honour' or 'provocation'.⁵⁸ Evidence of prior acts of violence by the perpetrator should also be considered during court proceedings.⁵⁹

Victims' rights Victims should be enabled to testify through measures that protect their privacy, identity and dignity while ensuring their safety and avoiding secondary re-victimisation.⁶⁰ Victims should be enabled to speak to a female officer⁶¹ and should be informed of the offender's release from detention or imprisonment.⁶²

Exercise of powers The strategies provide that the exercise of powers by police officer, prosecutors and other criminal justice officials should be in line with the rule of law and codes of conduct and that such officials should be held accountable for any infringement thereof through appropriate oversight and accountability mechanisms.

3. Realities for women survivors of violence seeking protection and justice - Southeast Asia

This section briefly reviews the information on the extent and nature of violence against women in the specific Southeast Asian countries and the current realities faced by survivors in seeking protection and justice. As previously mentioned, the focus of this research is on 'good practices' and is not aimed at providing a thorough assessment of the situation experienced by women in each of the ten Southeast Asian countries. However, appreciating the realities women face is important when analysing which practices can contribute to an appropriate and gender-sensitive criminal justice response. Indeed, research and data collection are viewed as a good practice in and of themselves.

Box 9: Research and data collection as a good practice

The ASEAN Regional Plan of Action, Action 5 calls for States to establish regional guidelines on the collection and analysis of data related to violence against women and to develop improved national data systems to collect disaggregated data on violence against women. This should include: prevalence data; cost studies; victim users and satisfaction surveys; administrative data (reporting, prosecution and conviction rates); and monitoring and evaluation

54 Article 14(a), Updated Model Strategies.

55 Article 14(a), Updated Model Strategies.

56 Article 16(e), Updated Model Strategies.

57 Article 15(b), Updated Model Strategies.

58 Article 15(d), Updated Model Strategies.

59 Article 15(g), Updated Model Strategies.

60 Article 15(c), Updated Model Strategies.

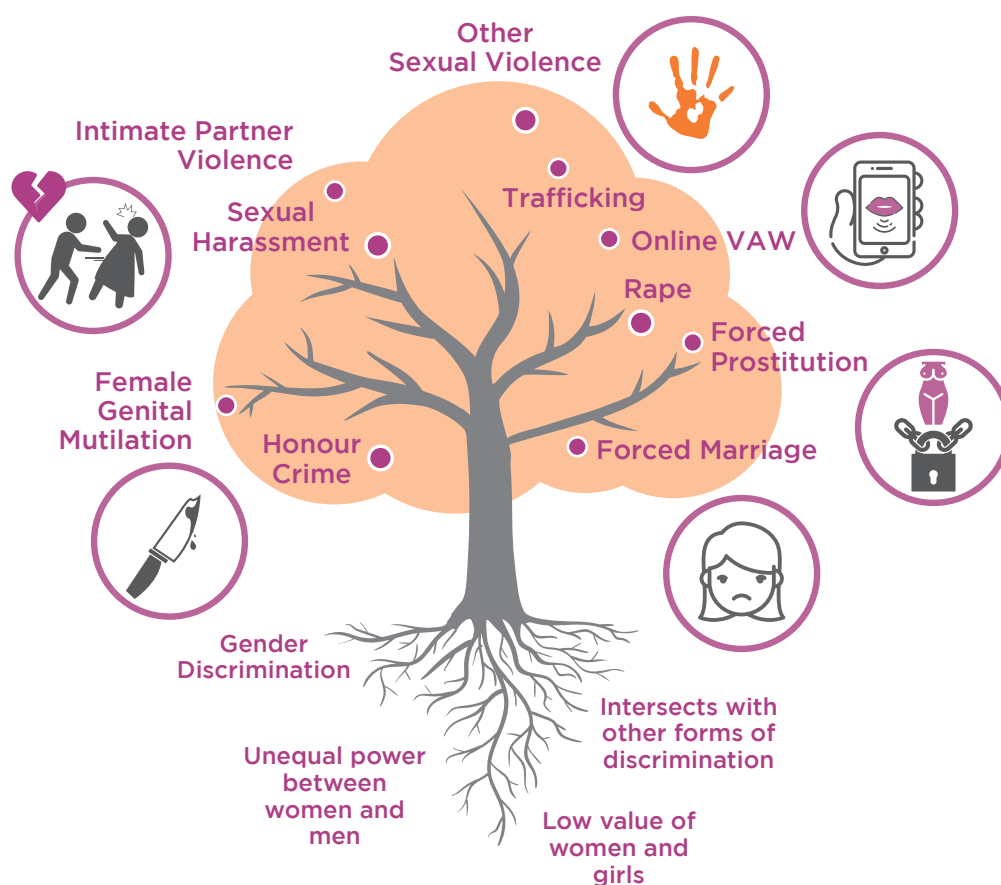
61 Article 16(l), Updated Model Strategies.

62 Article 17(c), Updated Model Strategies.

3.1 The extent and nature of violence against women in Southeast Asia

All forms of violence against women are present in the Southeast Asian region, those manifesting in the form of physical, sexual, psychological and economic harm, encompassing a range of behaviours designed to exert power and control over women and occurring in the family, within the community and perpetrated or condoned by the State. However, the most common forms of violence against women that have been studied in this region are intimate partner violence, rape and sexual assault and sexual harassment. Available information portrays a grim picture of the extent and nature of violence against women in Southeast Asia.

Diagram 2: Various forms of violence against women



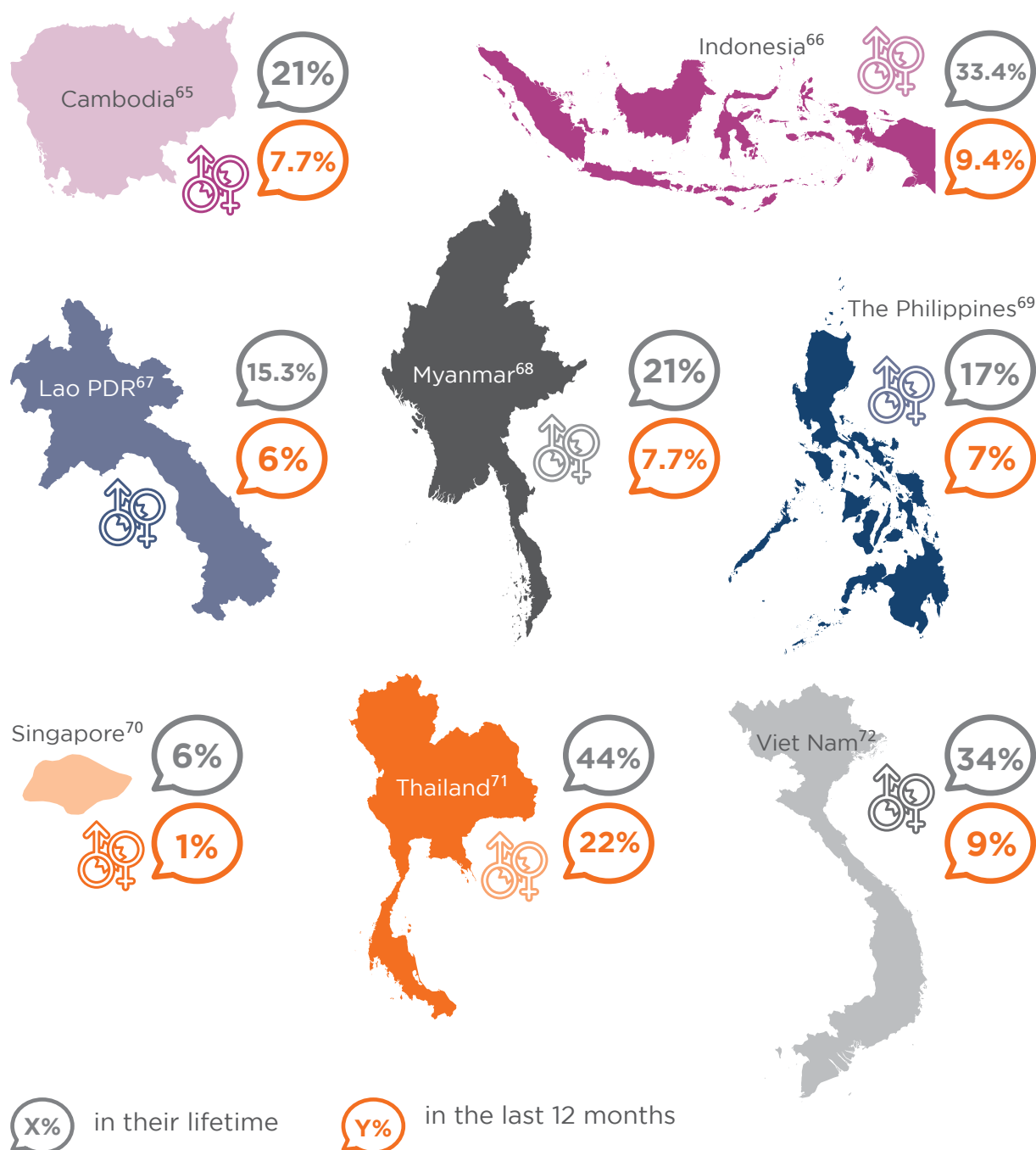
Prevalence rates

The prevalence rate of intimate partner violence (physical and/or sexual violence) in the region is reportedly higher than the global average. The World Health Organization’s 2013 global report indicates a Southeast Asian regional prevalence rate of 37.7 per cent as compared to the global rate of 30 per cent.⁶³ According to existing national prevalence studies and demographic and health surveys, the prevalence of intimate partner violence (physical and/or sexual violence) among all women who have had a partner ranges from a low of 6 per cent (Singapore) to a high of 44 per cent (Thailand). Diagram 2 sets out each country’s national data, where available.⁶⁴

63 WHO. ‘Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence’. 2013, p. 17.

64 Getting a clear picture of the extent and nature of violence against women in Southeast Asian countries is difficult due to the lack of good and comparable national data. However, there has been a recent impetus by governments to undertake prevalence surveys. Eight of the ten ASEAN countries have done so since 2010: Cambodia (2015); Indonesia (2016); Lao PDR 2014; Myanmar (2016) The Philippines (2013); Singapore (2013); and Viet Nam (2010).

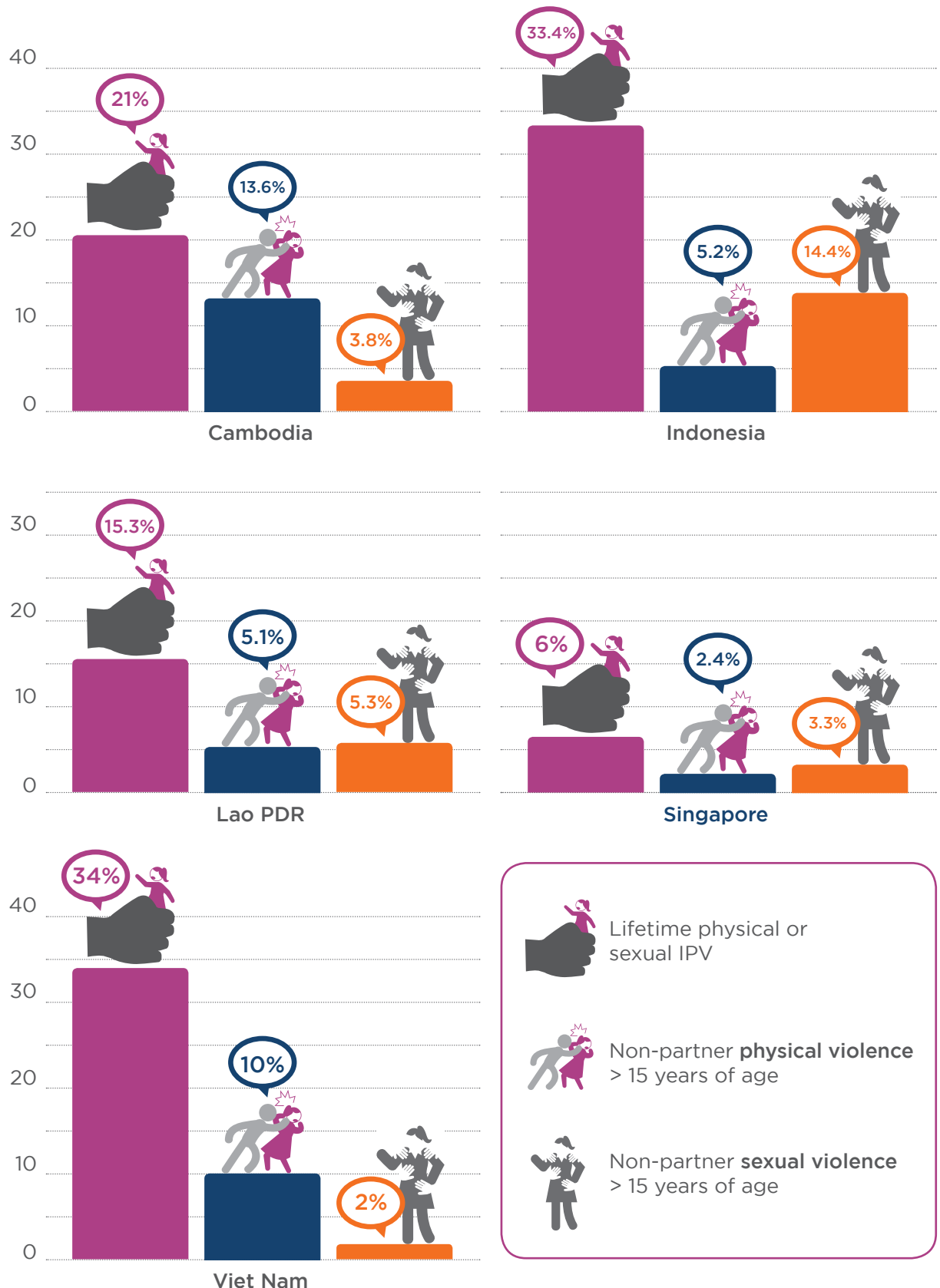
Diagram 3: Prevalence rates of physical and/or sexual violence intimate partner violence In Southeast Asia



65 Ministry of Women's Affairs, Cambodia. "National Survey on Women's Health and Life Experiences in Cambodia". 2015.
 66 Statistics Indonesia. "National Women's Life Experiences Survey". 2016.
 67 National Commission for the Advancement of Women, Lao PDR. "Lao National Survey on Women's Health and Life Experiences 2014: A Study on Violence against Women" 2015.
 68 Ministry of Health and Sport, Myanmar. "Demographic and Health Survey 2015-2016". 2017.
 69 Philippine Statistics Authority. "Philippines National Demographic and Health Survey 2013". 2014.
 70 Bouhours, B., Chan, W., Bong, B. and Anderson, S. "International Violence against Women Survey: Final Report on Singapore". 2013.
 71 UN Women. Progress of the World's Women: In Pursuit of Justice. 2011.
 72 Viet Nam General Statistics Office. "Results from the National Study on Domestic Violence against Women in Viet Nam: 'Keeping silent is dying'". 2010.

Overall, violence against women perpetrated by someone other than an intimate partner is not as common as intimate partner violence, but still is a significant problem in Southeast Asia. Diagram 4 illustrates that while violence is common in the region, levels and patterns vary.

Diagram 4: Patterns of violence against women in Southeast Asia



Most prevalence studies on violence against women obtain the information from the women's perspective. Interestingly in 2013, UN Women published research from selected countries on the prevalence rates of men who report perpetrating rape. Two of the countries included are from this region.⁷³ In Cambodia, 20 per cent of men admitted to having committed rape (which included partner, non-partner and gang rape). Nearly half of the respondents who admitted to having committed rape had raped more than once and over 20% had raped more than one victim. In Indonesia, 20 per cent of men living in urban areas admitted to having committed rape, compared to 26.2 per cent of men living in rural areas. Of the men living in Papua, Indonesia, 48.6% of men interviewed admitted to having committed rape.

Other data indicating extent of violence against women

Some countries in Southeast Asia have been tracking recorded cases which illustrate increasing numbers of incidents of violence against women being reported to criminal justice agencies and non-criminal justice agencies. In Indonesia, according to the National Commission on Violence against Women (Komnas Perempuan), which compiled data from 280 institutions from around the country, recorded cases of violence against women showed dramatic increases from the 25,522 cases in 2007 to 52,425 cases in 2008 and to 143,585 cases in 2009. The number of victims of domestic violence or violence in a personal relationship was the highest (95%) in these recorded cases, compared to violence perpetrated against women in the community and violence perpetrated by the state.⁷⁴ In Brunei Darussalam, the Brunei Times reported in 2008 that the statistics of the Community Development Department showed that reported domestic violence in the country had risen in recent years from 81 cases in 2000 to 214 in 2007.⁷⁵

Box 10: Confusion over terminology – prevalence rates, recorded cases and reporting rates

The interpretation of prevalence rates, the number of recorded cases and reporting rates can be confusing. For this report, the following definitions are used:

- ❖ **'Prevalence rates'** is used to try to quantify the problem of violence against women. The prevalence rate in a country is an estimate of what percentage of women in the population had been violently victimised. It is often determined by victimisation surveys.
- ❖ **'Recorded cases'** is a broad term that covers the absolute number of reports of violence against women received by criminal justice and non-criminal justice agencies, such as hotlines, women's commissions, or various service providers.
- ❖ **'Police-reported rates'** refers to national data gathered by criminal justice state agents. This is often called administrative criminal justice data. The police-reported rate of a crime is generally given as the number of cases reported per 100,000 in population.

Actual prevalence rates are usually considered to be significantly higher than the statistics based on reporting, due to rampant underreporting.

⁷³ Fulu et al. 2013.

⁷⁴ Komnas Perempuan. 'Annual Notes on Violence Against Women: It Is Not Only At Home: Women's Experience of Violence in Unequal Power Relation'. 2010.

⁷⁵ Due Diligence Project. 'Regional Report: Asia Pacific – Due Diligence and State Responsibility to Eliminate Violence against Women'. Undated. <www.duediligenceproject.org>

Careful how numbers are interpreted. It is not unusual to see an increase in the number of reports of violence against women occurring after the introduction of certain practices, such as specialised legislation. When increasing reporting of violence against women occurs, some believe that this means that the prevalence rates of violence (the actual number of cases) are increasing in their community. However, increased reporting might be seen as a positive sign, illustrating a decline in tolerance of violence among society at large, greater confidence in the policing and justice systems, increased understanding and respect for victims by police and criminal justice providers, or better coordination amongst the various sectors responding to violence.

Both prevalence studies and the tracking of reporting data highlight the pervasiveness of violence against women in Southeast Asia. They also provide indications of the extent of the problem of under-reporting. Even without precise data, the available research shows that violence against women affects all socio-economic and educational classes and has an impact on the lives of millions of women. In fact, an Indonesian survey found that women who have received higher education and those who live in urban areas experienced higher rates of violence, with 36.3 per cent of women in urban areas being subjected to violence as compared to 29.8 per cent in rural areas and 39.4 per cent of women who had completed high school education or greater as compared to 35.1 per cent of women without jobs.⁷⁶

Nature of violence against women – common characteristics

Prevalence rates only provide a partial picture. There is a need to understand the context of, and the story behind, the data which has implications for good practices in laws, policies, programmes and practices. Some of the common characteristics of violence against women in Southeast Asia include:

The majority of perpetrators are known to the victim. In most forms of violence against women, the majority of perpetrators are men known to the victims: current and ex-intimates, family members, neighbours, work colleagues, friends and acquaintances, although violence can also be perpetuated by strangers. A study on sexual violence in Viet Nam and Thailand found that between 86 and 98 per cent of the suspects were known to the victims.⁷⁷ Similarly, research in Malaysia on sexual crimes found that 77 per cent of the victims knew the accused.⁷⁸



Implication for good practices It needs to be a shift in the way laws and policies are drafted, away from operating on the basis of notions that ‘real cases’ of violence against women are those committed by strangers, involving weapons and injury, to the reality that the majority of perpetrators are known to the victims.

The continuum of violence. Violence against women is not necessarily deviant and episodic, but rather part of the norm for many women in their everyday lives.⁷⁹ There is a continuum of violence that includes all the different and varied manifestations of behaviours of gender inequality and patriarchal domination.

⁷⁶ Statistics Indonesia. 2016.

⁷⁷ Skinnider, E., Montgomery, R. and Garrett, S. *The Trial of Rape: Understanding the Criminal Justice Sector Response to Sexual Violence in Thailand and Viet Nam* UN Women, UNDP and UNODC. 2017.

⁷⁸ Lochhead, J. and Tan Pek Leng. *Seeking Justice for Victims of Sexual Crime*. Women’s Centre for Change, Penang. 2009, p. 25.

⁷⁹ The concept of the continuum of violence was first outlined by Liz Kelly in *Surviving Sexual Violence* 1988.



Implication for good practices It needs to be a change in how criminal justice systems analyse violence against women. If the criminal justice system is concentrating only on the extremes of violence against women and focusing on incidents in isolation, then it does not fully understand the meaning and consequences of violence against women. Criminal definitions of violence against women can include the notion of a continuous series of elements or incidents that flow into one another and cannot be readily distinguished. For instance, Sweden’s Penal Code includes the specific offence of ‘gross violation of a woman’s integrity’ which is constituted when a male perpetrator commits repeated violations, such as physical or sexual abuse, against a woman with whom he has, or has had, a close relationship.⁸⁰ The idea of a continuum should not be taken to mean a hierarchy of seriousness. ‘It reflects the continuum of complex and interlinked experiences of harassment, violation, abuse, assault in the lives of individual women’.⁸¹

Repeated victimisation. Women are much more likely to experience frequent acts of violence rather than a one-off incident. Intimate partner violence often involves many different and diverse events that form a continuum pattern of different types of coercion and assaults which are used to control the victim. Sexual violence often involves repeated assaults by the same and sometimes different perpetrators.⁸² **A Cambodian** study found that this was the case for all types of intimate partner violence.⁸³ This same study found that three-quarters of women who experienced physical and/or sexual violence reported experiencing severe acts of violence, rather than only moderate acts. **A Singaporean** study found that 58.8 per cent of victims of partner and non-partner violence experienced repeated victimisation, with over 13 per cent experiencing ten or more incidents.⁸⁴



Implication for good practices Criminal laws and practices are rarely designed to effectively address repeated acts of violence and their cumulative impacts. More often they focus on incidents in isolation and examine each incident in terms of seriousness. Practices need to shift from focusing only on the latest incident of violence, which might be assessed by a criminal justice provider as minor or a misdemeanour, to those that appreciate the history of violence and the lethal risks for the victim.

Trivialising the violence. The violence is often trivialised through inaccurate and unhelpful descriptions such as ‘date rape’ or ‘domestic violence.’

Box 11: The words of domestic violence

The term ‘domestic’ to describe violence can understate the seriousness and criminality of violence within the home. As one scholar notes: “Domestic” means private and is

⁸⁰ *The Swedish Kvinnofrid package. 1998.*

⁸¹ *Women’s Support Project. ‘The Continuum of Violence against Women’. Undated. <www.womensupportproject.co.uk>*

⁸² *Kelly, L. 2005.*

⁸³ *Ministry of Women’s Affairs, Cambodia. 2015, p. 47.*

⁸⁴ *‘International Violence against Women Survey: The Singapore Report – Preliminary results of the study’ 2010. http://lkyspp2.nus.edu.sg/ips//wp-content/uploads/sites/2/2013/06/International-Violence-Against-Women-Survey_2010.pdf*

often perceived as a relatively unimportant place, with housework depicted as not quite genuine work since it is unpaid, in contrast to the more important world of real work and politics outside the home. The separation of the private and public is both part of our actual lives and an ideological mystification of liberal-patriarchal reality. Women's natures are such that they are properly subject to men and their proper place is in the private, domestic sphere, while men properly inhabit, and rule within, both spheres. By prefixing violence with the word "domestic", as a general category of offence, it becomes less criminal and neutralises the role of the perpetrator.'⁸⁵

The context in which violence takes place can impact on how the criminal justice providers view the seriousness of the violence and in some situations the violence might not even be criminalised. In discussing cases of boyfriends allegedly raping their girlfriend in Viet Nam, a police officer noted '*These boys and men are not rapists, they are in love.*'⁸⁶



Implication for good practices There is a need to review criminal laws and practices to ensure that violence against women is not trivialised and to appreciate that often the most common locations for violence against women are in private spaces, such as the home of the victim or suspect, another person's home, or a hotel room.⁸⁷



We had very good experts on the Arabic language who explained for example the link between gender, or the importance of gender and language in the Arabic context. They showed us that gender matters and how important this is to interpret it correctly. [There are] different interpretations of terms which are very oppressive towards women. The word "hit" has sixty different interpretations. So "hit your wife" could be interpreted in sixty different ways. But you know all the people who interpret and analyse the religious sources are raised in a patriarchal context so that's how they will interpret "hit". And there was one term she said is the term of "equality" in the religion, in Islam. She said **"whenever I find an interpretation which is not based on equality, I know this is a wrong interpretation. It is wrong because it is contradictory to what is in the religion."**

*Staff member from an international organisation in Indonesia,
from a previous study.*



⁸⁵ Easteal, P., Bartels, L. and Bradford, S. 'Language, gender and 'reality': Violence against women' *International Journal of Law, Crime and Justice* 40. 2012. Pages 324-337 at p. 328.

⁸⁶ Skinnider, E. et al. 2017, p. 45.

⁸⁷ Skinnider, E et al. 2017, p. 36.

Certain groups of women are more vulnerable to violence. Certain groups of women, such as those in the sex industry, homeless women, runaways, women with disabilities, refugees and stateless women, ethnic minorities, and women in detention, are more vulnerable to violence while at the same time not seen as credible and therefore silenced by the criminal justice system.⁸⁸



Implication for good practices As one scholar has noted, ‘This vulnerability has tended to be understood in terms of women’s locations, lifestyles and/or abilities, but much more emphasis needs to be placed on the targeting strategies of sexually coercive men that they choose to victimise women and children who have less resources to resist and who are less likely to be believed or taken seriously should they report.’⁸⁹

Perceptions of violence against women reflected in society

How society, both women and men, perceive violence against women in their communities has implications for the development of good practices in the criminal justice system. Such perceptions influence whether women will seek protection and criminal justice and whether they will be supported in doing so by their families and communities. Such perceptions and societal attitudes are often embedded in the attitudes of police officer, prosecutors and other criminal justice providers which will influence their interpretation of criminal laws and policies and their treatment of victims. Table 1, created using the information from various national demographic and health studies, shows that many persons in Southeast Asia, both men and women, believe that men are justified in committing violence against their partners.

Table 1: Percentage of women and men who think it is justified for husbands to beat their wives

Country	Year DHS	Burns the food		Argues with husband		Goes out without telling him		Neglects the children		Refuses to have sex with		Any of these reasons	
		Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
Cambodia	2014	11.7	1.9	23.9	11.2	31.3	12.5	43.7	19.1	12.8	3.9	50.4	26.5
Indonesia	2012	2.5	0.8	5.7	3.4	24.0	11.8	27.3	11.9	8.9	3.1	34.5	17.3
Lao PDR	2012	19.4	13.5	26.8	24.8	32.1	25.3	46.2	35.4	24.9	20.6	58.2	49.1
Myanmar	2016	13.0	8	10	13	22	17	42	40	10	10	51	49
The Philippines	2013	1.8		3.0		4.3		10.6		1.6		12.9	
Thailand	2012	1.0		2.0		4.3		10.8		2.0		13.1	
Viet Nam	2011	3.2		20.6		13.6		26.8		5.7		35.8	

⁸⁸ Skinnider, E et al. 2017.

⁸⁹ Kelly, L., 2005, p. 3.

Additional studies from other countries support the concern that violence against women is culturally tolerated by society, by the victims and by criminal justice providers.



I think that working on the issue of gender-based violence is difficult in Asia and in this country because here people are raised to obey the husband. It is quite hard to educate. The law students still think it is ok [to beat women]. We asked them, **“If the woman play with cards, gamble, can the man hit the wife?” They said “yes, because it is not good to play cards and gamble.”** we said “Well, still you cannot hit her for that!” And another question was “If the wife doesn’t do the housework, clean etc. can the man hit the wife?” They said “yes.” So ... ok. We didn’t show any emotion or reaction to that kind of answers, but we thought “Wow, even the law students say that!”

Justice provider from Lao PDR.



Cambodian victims of intimate partner violence are more likely to justify violent acts by their husbands, **with 58% condoning the husband hitting his wife in particular situations.**⁹⁰

“Over 60% of local officials and police in Cambodia believe a husband can threaten his wife with a weapon when she questions him.”⁹¹

“The highest proportion of Singaporean victims who considered the violent incident to be a crime was those attacked by strangers (58.6%).”⁹²

”In Singapore, victims of violence were more likely to regard violence inflicted by non-partners as a crime than violence by intimate partners (44.1% and 20.2% respectively).”⁹³

⁹⁰ Ministry of Women’s Affairs, Cambodia. 2015.

⁹¹ UN Women. ‘Factsheet: Access to Justice for Women in East and Southeast Asia’. 2011, p. 5.

⁹² ‘International Violence against Women Survey: The Singapore Report – Preliminary results of the study’. 2010, p. 3.

⁹³ ‘International Violence against Women Survey: The Singapore Report – Preliminary results of the study’. 2010, p. 2.

‘Close to a majority of Laotian women (49%) agreed that a husband could hit his wife if she was discovered to be unfaithful.’⁹⁴

“The majority of women who experienced domestic violence in Viet Nam thought it was wrong, but not a crime (54%)”⁹⁵



Implication for good practices

Good practices need to appreciate how victims, society and criminal justice providers perceive gender-based violence, and they should be designed to address such common views. This might be through targeted legal literacy programmes for victims, awareness-raising campaigns for society and specialised training for criminal justice providers.

- ❖ Such perceptions by women who experience violence lead to underreporting. This might be due to their belief that the violence is something that just happens, or that although it might be wrong it is not a crime.
- ❖ Such perceptions by society as a whole can silence and isolate victims who consider the violence to be a crime but do not feel supported enough to report the violence to the police officer. When victims have engaged in certain behaviours that society deems inappropriate, victims will be reluctant to seek assistance.
- ❖ Such perceptions by criminal justice providers who might believe the victim provoked the violence, can lead to indifferent or harsh treatment and victim blaming. Such treatment upon reporting contributes to high levels of attrition.

Emerging trends in the region and under-studied forms of violence against women

Some forms of violence are specific to certain countries. For example, incidents of **acid attacks** have been reported in Cambodia and Viet Nam, and Cambodia recently passed an Acid Attack Law in 2011. **Violence associated with conflict** has been identified in parts of Indonesia, Myanmar, the Philippines and Thailand. The amount of gender-based violence, including sexual harassment and human trafficking, increases during and in the **aftermath of disasters**.⁹⁶ In some countries in Southeast Asia, there are concerns of **state-sanctioned violence against women** that is peculiar to the social, cultural or religious context in different countries. An example of violence against women perpetrated by the state can be found in Malaysia where the courts sentenced a woman to caning for drinking beer.⁹⁷ In some countries **custodial rape and sexual abuse by the state** have been reported. For instance, in Indonesia, women recruit to the police force and military are subjected to virginity tests.⁹⁸ Another

⁹⁴ National Commission for the Advancement of Women, Lao PDR. 2015.

⁹⁵ UNODC, the Research Centre for Gender and Development and the European Institute for Crime Prevention and Control ‘Research in the Quality of Criminal Justice Services Available for Victims of Domestic Violence in Viet Nam’ 2011, p. 48.

⁹⁶ Chanchai, R. ‘Gender Equality and Climate Change Action’, presentation at the 2017 Annual Judicial Dialogue of Southeast Asian Judges, 6 October 2017. UN Women.

⁹⁷ The Guardian. ‘Malaysia spares woman from caning for drinking beer’. 2010. <https://www.theguardian.com/world/2010/apr/01/malaysia-commutes-caning-sentence>.

⁹⁸ Human Rights Watch. ‘Indonesia Military Imposing Virginity Tests’. 2015. <<https://www.hrw.org/news/2015/05/13/indonesia-military-imposing-virginity-tests>>

example is found in the Philippines where there are ‘reports of rape and sexual abuse of women in police or protective custody – often women from marginalised groups, such as suspected prostitutes, drug users, and lower income individuals arrested for minor crimes’.⁹⁹



...[P]olygamy is justified by religion, but in practice, it is violence against women. Genital mutilation is violence against women. It is justified by the interpretation of religion. The men’s interpretation of religion.

*Indonesian government staff member.*¹⁰⁰



There are other forms of violence against women that are not yet understood or well-recognised in law or by the criminal justice agencies, such as the use of **coercive control and psychological violence**, the use of **new technologies, the Internet and electronic mail** to perpetuate cyber violence or e-VAW. In addition, other violence such as **stalking and violence against persons who identify as women (LGBTQIA)** are just being discussed by civil society organisations. The topics of **prostitution and violence against domestic workers** are also understudied in this region.



[T]echnology, we see this a lot in the psychological abuse, emotional abuse, stalking behaviour. Usually it is connected to emotional abuse because a lot has got to do with the stalking behaviour. Usually, it is connected to their phones. I had a client that even before she reached the office, the boyfriend had already there. And she was like “how do you know I was here?” and when she was on her phone he would have known that she was talking to me so she freaked out and I also freaked out, and some of these things are illegal, but if they put a device to track their cars or phones. She did not pursue in court or anything, but I would be interested to see how it would come out. The ones we see, it is always kind of like when the full spectrum of violence is going on. The controlling behaviour, the cooling downs, using online space to be little them, etc. People need to know about some of these things because when they close down their profiles online then it may be hard to have the evidence back if you want to make a case.

NGO staff member in Singapore.



⁹⁹ US Department of State. ‘2010 Country Reports on Human Rights Practices: Philippines’, US Department of State, Bureau of Democracy, Human Rights and Labor, Washington, DC. 2011, p. 23.

¹⁰⁰ Interview with staff at the Ministry of Women in Indonesia from TIJ’s research project, ‘Women as Justice Makers’.

On-line violence against women. When violence against women involves technology, the violence can be transmitted more broadly, the harm may be aggravated and, if the transmission crosses borders, the case may raise legal and practical complications. The capacity of technology allows violence to be committed at an increased speed and rate, allows the storage of data and images, and involves not only the primary perpetrator, but also others as well who repost/redistribute or access online, as well as platform providers and intermediaries who deny their responsibility to ensure that their sites do not serve to facilitate violence. Combatting such violence presents specific challenges in terms of defining what conduct constitutes criminal conduct (e.g. which data or images constitute violence and how to define each element, such as intent to harm, content, credibility or imminence of harm, extent of harm, etc.). As is the case with other forms of violence against women, victim blaming is common, with criticism being directed at women who establish cyber-relationships, engage in sexting, send suggestive images, or consent to intimate partners taking suggestive images. These are seen to transgress appropriate cultural behaviour.¹⁰¹

Box 12: Online violence against women

Online violence against women has been defined as ‘acts of gender-based violence committed, abetted or aggravated in part or fully by the use of information and communication technologies (ICT). These acts include, amongst others, cyber stalking, bullying, threats, blackmail and sexual harassment; assessing or uploading/disseminating intimate photos, videos or audio clips of a woman without her consent; accessing or disseminating a woman’s private data without her consent; uploading/disseminating a woman’s altered photos or videos and uploading them to dating, pornography or other kinds of websites; creating fake profiles and other forms of identity theft; doxing (searching and publicizing personal data of another), and exploitation of women.’¹⁰² It can be seen as part of the continuum of violence against women with the same causes and similar consequences. It often takes the form of sexual violence, including threats of rape, non-consensual dissemination of intimate data and images, dissemination of rape recordings, cyber stalking, sexual harassment and exploitation of women.¹⁰³ The UN Special Rapporteur on violence against women has identified online violence as a recent phenomenon that requires examination of the applicability of national laws in addressing it.¹⁰⁴

Determining consent in an online context is often complicated by the exact act to which the consent, if any, relates. Laws need to clearly define consent in offences relating to online violence. Identifying the suspect in online violence is also challenging as there is anonymity in the digital and virtual space, through encryption and privacy protocols. While a number of States have attempted to criminalise online violence, its enforcement has proven seriously problematic due to the lack of a mechanism, procedures, expertise and skills. As noted in one report: ‘As the violating material is posted on a third-

101 Abdul Aziz, Z. ‘Due Diligence and Accountability for Online Violence against Women’. Due Diligence Project. 2016.

102 Abdul Aziz, Z. ‘Due Diligence and Accountability for Online Violence against Women’. Due Diligence Project. 2016.

103 Association for Progressive Communications ‘Take Back the Tech!’. Ushahidi platform 2014. <<http://genderit.org/onlinevaw/>>

104 Simonovic, Dubravka. United Nations Special Rapporteur on violence against women, its causes and consequences, Report of the Special Rapporteur on violence against women, its causes and consequences. 2016. A/HRC/32/42, 19 April 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/080/53/PDF/G1608053.pdf?OpenElement>

party platform, often sited beyond the territorial limits and jurisdiction of the State concerned, providing justice to the victims is especially difficult. Takedown notices, removal of links and disclosure of identity can only be undertaken by third parties who may or may not be liable for the violating material posted on their platforms.¹⁰⁵

Box 13: Studies of online violence against women in Southeast Asia

The increasing prevalence of online violence against women has been the subject of a number of recent studies in some of the Southeast Asian countries, raising awareness of the unique challenges in protecting victims, investigating and prosecuting incidents, punishing perpetrators and providing redress to victims.

Malaysia

EMPOWER has been studying cyber-violence and suggests that cyber-violence is an issue that needs specific and specialised attention and understanding. They highlight the challenge of securing sufficient evidence under the law to successfully prosecute a case, because victimised women are often so traumatised by what has happened to them that they get rid of evidence which may be crucial, for example by deleting email, text messages and digital photos. The lack of data available on VAW and cyber-violence is a major hurdle in ensuring comprehensive laws and an effective national strategy.

The Philippines

A study on e-VAW maps out existing legislation and policy in the areas of ICT and VAW, in order to spotlight incidents of VAW perpetrated via ICT and unique concerns regarding the emergence of these technologies. The most evident cases of violence committed against women are in the realm of privacy rights, resulting in the illicit production and distribution of depictions of private and intimate activities. There is an alarming trend of cyber-sex intertwined with cyber-pornography and cyber prostitution, which are run by criminal syndicates. This is intricately linked to other forms of violence such as trafficking. In the Philippines, there are a number of different pieces of legislation that can be utilised in the prosecution of these kinds of cases, including the Anti-Sexual Harassment Act; the Cybercrime Prevention Act of 2012; the Anti-Mail Order Spouse Act; Anti-Child Pornography Act; and the Anti-Bullying Act of 2013. However, this particular study cited the lack of a specific law to prosecute perpetrators of VAW committed through the use of ICT or cyberspace.

105 Abdul Aziz, Z. 'Due Diligence and Accountability for Online Violence against Women'. *Due Diligence Project*. 2016, p. 5.

Singapore

An exploratory study examined whether and in what ways technology is shaping women's experiences of sexual violence and their resistance to sexual violence. Technology played a role in almost one in five (18%) case inquiries to an NGO in 2016. Image-based sexual abuse (e.g. revenge pornography, sextortion, non-consensual distribution of intimate images) and contact-based sexual harassment (e.g. unwanted messaging and calling) were the main forms of technologically facilitated sexual violence experienced. Almost one in three (30%) of the 60 SACC cases featuring technology involved contact-based sexual harassment. Most of the perpetrators were the employers or colleagues of the victim. Technology was used not only by perpetrators to facilitate abuse, but also by victims as a way of recording abuse/harassment and collating evidence. Technology was being 'folded into' pre-existing practices of violence, harm and harassment, particularly intimate partner violence and workplace sexual harassment, in addition to creating new modalities of violence, harm and harassment.



[T]here is still this mindset that somehow it is less real and that the only way to actually avoid being harassed online is to stop being in the online space. Rather than the online spaces themselves being changed to be less harassment friendly. **This is one of the things that we were able to see in our research, that technology-facilitated sexual crimes are folded into existing forms of violence, rather than creating new forms of violence. You would need to be already in an abusive relationship to abuse technology, to abuse the victims further.** But I think the government has a lot of focus on 'up skirting' [the covert, voyeuristic photographing of a woman's underwear up her skirt] cases. It has been in the news. But again, there is an over-representation because it is in public places, so there is a strong message in the media where they say this will not be tolerated. We have just started with the report and one of the recommendations is to build internal capacity to understand the nuances of such crimes and to support accordingly.

NGO staff member in Singapore.



Violence against persons identifying as women – LGBTQIA. A form of violence that has been increasingly discussed in Southeast Asia is violence against persons because of their actual or perceived sexual orientation or gender identity. There appears to be limited legal frameworks in many of the countries in this region to prohibit discrimination or gender-based violence because of sexual orientation or sexual identity. According to UN data reported in the Huffington Post, Thailand is the only Southeast Asian country that protects gender expression.¹⁰⁶

¹⁰⁶ The Huffington Post. <https://www.huffingtonpost.com/entry/lgbt-in-southeast-asia_us_55e406e1e4b0c818f6185151>

Box 14: Studies of LGBTQIA in Southeast Asia

There has been an increasing number of studies on forms of violence against LGBTQIA in some Southeast Asian countries.

The Philippines

Legislators are studying various reports to inform their discussion of a Bill to introduced LGBT desks in all police stations and a Bill to criminalise discrimination in the employment of LGBT individuals and prohibit schools from refusing to register or expel student on the basis of sexual orientation or gender identity. These studies include a report entitled the ‘Status of LGBT Rights in the Philippines, Submission to the Human Rights Council for the Universal Periodic Review 13th Session’, which was co-authored by the Rainbow Rights Project (R-Rights) and the Philippine LGBT Hate Crime Watch (PLHCW) as a documentation of different abuses based on sexual orientation and gender identity in the country since 2007. A second report is entitled ‘A Report on Violations of Human Rights Based on Sexual Orientation and Gender Identity in the Philippines’ authored by the Progressive Organization of Gays in the Philippines (ProGay).

Viet Nam

A UNESCO study highlighted bullying—usually in the form of verbal insults from peers and teachers—of lesbian, gay, bisexual, and transgender (LGBT) students in Vietnam’s schools. In November 2015, the National Assembly approved a bill to legalise sex reassignment surgery and to introduce the right to legal gender recognition for transgender people who have undergone such surgery. The law allows people who wish to undergo gender-affirming surgeries to do so in Viet Nam rather than abroad, and to change the gender marker on official documents — a small, but significant step towards recognising transgender people’s rights.

Prostitution. In some countries in this region, the CEDAW Committee has raised concern that with the increase in the number of places of entertainment, such as nightclubs, there is an increasing risk that women are subjected to sexual exploitation in the form of prostitution.¹⁰⁷ It notes the limited information provided on the prevalence and magnitude of the problem, including in the border regions, as well as the lack of information on any recovery and reintegration initiatives in place for women who wish to leave prostitution. In Myanmar, a lawyer reported in a previous TIJ research project that the police officer always targets female prostitutes when arresting sex workers despite the fact that the Prostitution Suppression Act mentions that sex workers can be either male or female. For her, this was ‘abusing women’s rights’.¹⁰⁸

¹⁰⁷ Committee on the Elimination of Discrimination against Women. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Lao People’s Democratic Republic*. 2009. CEDAW/C/LAO/CO/7.

¹⁰⁸ TIJ research project ‘Women as Justice Makers’. 2016.

Violence against domestic workers. Violence against domestic workers, who are predominately women, is of particular concern in some of the countries in this region. According to some reports, servants are sometimes beaten or refused the right to leave the house on days off, but they are often unwilling or unable to file complaints because most female domestics are foreign nationals and are highly dependent on their employers. For some persons lacking immigration status, 'private homes may be considered a good place to work precisely because of the lack of state oversight, but this lack of oversight also has the potentially unintended effect of making it extremely difficult for domestic workers to report abuse and exploitation. Migrant women who are the victims of domestic violence can be made even more vulnerable because of anxieties about immigration status and residence rights for themselves and family members, which can compound reluctance to approach the authorities for assistance (particularly when the migrant is of irregular status).'¹⁰⁹

Box 15: Case from Mae Sot, Thailand

'Owing to the destitute [sic] in her home country, A traveled from Myanmar to Mae Sot, Thailand and got a job as a domestic worker. When she worked for Nang Som as a domestic worker, she was not paid at all during the first 3 months. She was then told she had to change to work as a masseur and then she would get paid. She was sent by Nang Som to Bangkok on a truck, the cost paid by A. After working as a masseur, she was forced to sell sex by Nang Som in order to pay off the fee paid to the agent that had brought her to Bangkok. She feared Nang Som, as she had overheard of a story where a girl refused to sell sex and ended up dead. When A was finally able to go back to Mae Sot, she visited her aunt and was taken to the Mae Sot Labour Law Clinic operated by the Human Rights and Development Foundation who supported her report of trafficking and prostitution to the police. Because Nang Som was a prominent figure in the community, the police were reluctant to proceed. A's lawyers had to do much work in terms of coordination from bringing A to identify the crime scene and giving evidence to the police officer. The police in Mae Sot claimed that the trafficking was not an offence under their jurisdiction, so the lawyers had to bring A to report the case to the Bangkok police. There was some delay before the Court issued the warrant. Even after Nang Som was arrested and out on bail, the authorities asked A and her lawyers to withdraw their case. It took five years before the court heard that case, found Nang Som guilty, sentenced her to 11 years and ordered 110,000 Thai baht compensation to A.'¹¹⁰

3.2 Forms of violence against women reflected in the laws

There are variations across the region in terms of the legal protection offered against different forms of violence against women. While not all forms are criminalised nor are all forms covered in the laws that establish civil protection regimes, many of the Southeast Asian countries have in place various measures to

¹⁰⁹ Anderson, B. 'Worker, helper, auntie, maid? Working conditions and attitudes experienced by migrant domestic workers in Thailand and Malaysia'. International Labour Organization, Regional Office for Asia and the Pacific. 2016. <http://un-act.org/publication/view/worker-helper-auntie-maid/>

¹¹⁰ Human Rights and Development Foundation. 'Female Migrant Workers in Thailand: In Search of Human Dignity and Labour Rights through Justice System'. 2017, pp. 76-77. <<http://hrdfoundation.org/?p=1741&lang=en>>

respond to violence against women. There is broader legal coverage for intimate partner violence, rape and trafficking in the region, with fewer legal provisions on sexual harassment, marital rape and forced marriages. However, not all these legal measures actually criminalise the form of violence, but rather the form of violence is defined for the purposes of providing a civil protection order regime and assistance services to the survivors. In addition, some of the criminal laws define crimes of gender-based violence narrowly. The ways the laws actually define the various forms of violence against women can have implications for victims in terms of access to justice and adequate protection.

Box 16: Violence against women as ‘crimes’ versus ‘conduct’ that should require state action

In most countries in Southeast Asia, the general criminal laws establish ‘crimes’ under which acts of VAW are considered for prosecution. Several countries have also enacted legislation for specific forms of violence against women, with detailed forms of punishment, which might be classified as ‘crimes’ or something less than crimes, such as ‘administrative violations’. Some of the stand-alone domestic violence legislation does not specifically establish new crimes but rather defines acts of domestic violence in order to give the victim the right to invoke protection measures and receive support services.

These different approaches reflect the on-going debate about the relative merits and disadvantages of ‘criminalising’ certain forms of violence against women or advocating for a reconciliation approach. Some feminist scholars are broadly skeptical about using the criminal justice system in order to provide solutions to violence, using a ‘victimisation narrative’ and resulting in secondary victimisation.¹¹¹ Other feminist scholars emphasise the need for the criminal justice system to ensure accountability for violence.¹¹² Others point out that holding perpetrators to account does not necessarily require incarceration.¹¹³ Furthermore, criminalisation does not disallow for restorative justice approaches, provided that there is still accountability on the part of the perpetrator rather than placing the blame for the violence on the victim.

Domestic violence

Seven out of the ten Southeast Asian countries have specific stand-alone laws on domestic violence.¹¹⁴ In addition, one country has included such provisions in its Women’s Charter (Singapore),¹¹⁵ another country has included a protection regime for domestic violence in its family laws (Brunei Darussalam)¹¹⁶ and another country is currently in the process of drafting such a law (Myanmar).¹¹⁷ These laws

111 Mills, L. ‘Insult to Injury’. 2003.

112 Randall, M. and Venkatesh, V. 2016.

113 Klugman, J. ‘Gender-based Violence and the Law’. World Bank. 2017.

114 Cambodia’s Law on the Prevention of Domestic Violence and the Protection of Victims (2005); Indonesia’s Law No 23 of 2004 Regarding Elimination of Household (Domestic) Violence; Lao’s Law on Preventing and Combatting Violence against Women and Children (2014); Malaysia’s Domestic Violence Act 1994 (as subsequently amended); Philippine’s Anti-Violence against Women and Their Children Act (2004); Thailand’s Domestic Violence Victim Protection Act (2007); and Viet Nam’s Law on Preventing and Combatting Domestic Violence (2007).

115 Singapore’s Women Charter.

116 Brunei’s Married Women Act and Islamic Family Order. While there is no specific domestic violence law, authorities arrest individuals in domestic violence cases under the Women and Girls Protection Act.

117 Thailand Institute of Justice. ‘Scoping Study: Women’s Access to Justice: Perspectives from the ASEAN region’. 2016.

predominately focus on civil law protection, counselling, awareness-raising and programmes that empower women to improve their situation and to be knowledgeable of their rights rather than establishing specific criminal offences. This often means that civil protection laws provide for broader definitions of domestic violence than what is provided in the criminal laws. The Philippine Anti-Violence against Women Act specifically establishes new crimes of violence against women, as well as contains different definitions for the application of the civil protection regime. Some of the countries' domestic violence law, while not establishing new crimes, links that legislation to the offences already established in the Penal Code (e.g. Malaysia), while other countries' domestic violence laws criminalise acts of domestic violence but do not contain any substantial penal provisions, so there is no criminal punishment on the basis of the law alone (Cambodia). The domestic violence legislation in some other countries (such as Lao PDR) provides that less serious domestic violence acts should be dealt with as minor offences (official warning and re-education) or specifically provides that all minor misdemeanours or petty crimes in a domestic violence context may not be prosecuted as criminal offences (Cambodia domestic violence law article 36).

Table 2: Review of intimate partner violence in the legal frameworks of Southeast Asian countries¹¹⁸

Country	Criminal Law				Stand alone law that covers DV?	Civil Law						
	Does criminal law cover the following offences? G = general offence S = specific DV offence					Does domestic violence legislation cover the following abuse?				Does domestic violence legislation protect:		
	Physical	marital rape	emotional	repetitive		Physical	Sexual	emotional	economic	family member	Former spouse	unmarried
Brunei Darussalam	G	No	G	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Cambodia	G	G	G	No	Yes	Yes	Yes	Yes	No	Yes	No	No
Indonesia	S	No	S	No	Yes	Yes	Yes	Yes	No	Yes	No	No
Lao PDR	G	G	G	No	Yes	Yes	No	Yes	Yes	Yes	No	No
Malaysia	G	No ¹¹⁹	G	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Myanmar	-	-	-	No	No	No	No	No	No	No	No	No
The Philippines	S	S mitigation	S	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Singapore	G	No	-	No	Yes	Yes	No	Yes	No	Yes	Yes	No
Thailand	-	G mitigation	-	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Viet Nam	S	G	S	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

¹¹⁸ This table was developed through a number of resources, including reviewing the national laws, World Bank. 'Protecting Women from Violence – Women Business and the Law'. 2016; Thomas Reuters Foundation. A Landscape Analysis of Domestic Violence Laws. 2013. <<https://www.trust.org/contentAsset/raw-data/02bf55c6-0d6b-4799-b9ba-eab57c5b93a9/file>>

The debate about criminalisation of domestic violence. While there is consensus that certain types of domestic violence should be considered criminal (such as homicide or serious physical injury), other types of violence that are not 'physical' (such as emotional and economic violence and even marital rape in some countries) are not perceived with the gravity that is considered necessary for viewing them as crimes. The question of when psychological behaviour crosses the line to being considered 'violence' is not clear. It is also not clear when psychological violence crosses the criminal law threshold requiring a criminal justice response as opposed to civil protection or administrative sanctioning. For instance, domestic violence legislation that includes within the definition of violence such behaviours as unfaithfulness in marriage, gossiping and insults, as in the Lao PDR laws, leaves it unclear when 'bad behaviour' crosses the threshold into 'violence'. Added to this is that criminal laws usually look at the latest incident, which can seem minor when not viewed in the context of the repeated nature of domestic violence. The level of seriousness is often associated with the level of perceived 'injury' or 'harm'. Emotional and sexual violence towards one's wife has historically been viewed as a relatively insignificant event causing little trauma. However, research indicates that the multiple acts of emotional and sexual violence by someone whom they trust can have severe and long-term psychological consequences.¹²⁰



[E]ven when physical violence happens concurrently with psychological and emotional abuse, most of them would say that you know they can get over the physical violence, but they can't get over the psychological and emotional violence so it would get longer for them to heal from that. Sometimes it can be even more debilitating because of the frequency. It is very hard to prove [psychological violence in court] so we also share with them that it is always good to keep a documentation of it. Some of them write it down in a diary because it happens so often ... and some of them would go down to the police station and just make a report and say this is just my documentation or for court processes and for the whole week then they would bring this to the police station.

Interview with an NGO in Singapore.



Box 17: Concerns of trivialisation of crimes of domestic violence

Certain types of domestic violence, even when defined as criminal offences, tend to be trivialised and thus receive inadequate and inappropriate responses from the criminal justice system and society. Where domestic violence legislation classifies domestic violence as a crime, it is often classified as a misdemeanour rather than as a serious crime.¹²¹ Criminal laws often make such offences compoundable, which means that in

¹¹⁹ Malaysia's amendments to Penal Code s 375 makes forced sexual intercourse on a woman by her spouse a crime.

¹²⁰ Amiruddin, Z. and Begawan, B. 'Brunei: Marital Rape - Analysis of Current Laws Publication'. 2010. <<http://www.violenceisnotourculture.org/content/brunei-marital-rape-analysis-current-laws>>

¹²¹ Quast, S. 'Justice Reform and Gender'. DCAF. 2008.

such cases an official investigation cannot be initiated unless the victim makes an official complaint. This also means that a victim may withdraw a complaint and/or reach a settlement with the alleged perpetrator and the State must cease legal proceedings.¹²² One country, Thailand, has a short statutory limitation period for compoundable offences: the victim must decide to pursue a case and must file a complaint within three months of the incident.¹²³ In other domestic violence laws, there is mitigation if the violence was deemed to have been done in the spirit of discipline and ‘noble teaching’ (Cambodia).¹²⁴

Equating criminal justice with jail. Furthermore, there is often a misunderstanding or there might be a real restriction in some Southeast Asian countries where handling domestic violence in the criminal justice system is seen to be equated with jailing the husband and breaking up families. The challenge for victims is that in some countries where the victims do not want their husbands to go to jail but do want the violence to stop and get protection, the domestic violence laws that cover both criminal matters and civil protection orders often link the application for protection with a police report by the victim. This means that for victims who want protection but do not want to make a formal report to the police, this might create barriers. This has resulted in some persons arguing that criminalisation is not necessarily a good practice in addressing all forms of violence. However, criminalising all forms of violence against women, which has traditionally been discounted by the criminal justice system, is seen as an important way to ensure offender accountability, protect and provide dignity to victims and give a strong signal to the community that such violence will not be tolerated, and will not be seen merely as a violation against a person but as a crime against society that the state has raised to the level of crime. However, criminalisation does not have to mean imprisonment. International standards call for ensuring that the criminal court has a range of sentencing options, such as community service orders, restitution to the victim, house arrest, or non-institutional treatment.



[I]n Indonesia we only have one model for criminal sanctions which is by putting them in jail. But not really to put efforts on other forms of criminal sanctions like fines or restraining orders. Fines are also for a very, very small amount because it is a law that was established 30 years ago so the value of money has changed. That’s why judges don’t want to use fines but rather put them in jail. So that’s not solving the problem in my opinion.

NGO staff member in Singapore.



¹²² Thailand Domestic Violence Victim Protection Act, section 4 and Criminal Procedure Code, section 39.

¹²³ Thailand Domestic Violence Victim Protection Act Sections 7 and 8 and Criminal Procedure Code, Section 121.

¹²⁴ Cambodia Law on the Prevention of Domestic Violence and the Protection of Victims, Article 8.

While the trend towards establishing domestic violence legislation is an improvement, particularly for women seeking protection and assistance, there is a concern that these laws create a parallel way of dealing with violence which focuses on ‘problem solving’ or mediation. For instance, the justification and tone of some of the domestic violence legislation is that solving domestic violence problems using the existing criminal laws is not appropriate since those laws are designed to penalise criminals or offenders, not to rehabilitate them and/or protect victims of violence in the family. While it is important to offer a wide range of approaches to stop the repeated violence, the emphasis on restoring good family relations above the safety concerns for the women and holding perpetrators accountable for violence, is a concern. Some of the domestic violence laws prioritise the preservation of the family over the protection of women’s rights and do not challenge the prevailing notion that violence against women is a private matter.¹²⁵ There is a concern that these laws create a distinction between seriously harmful and less harmful acts of violence, the latter of which are exempted from penal liabilities and the emphasis is on mediation or ‘problem solving’. The CEDAW Committee is concerned that such violence would appear to be socially legitimised and accompanied by a culture of silence and impunity; that cases of violence are thus underreported; and that those that are reported are settled out of court, including through village mediation units as is done in Viet Nam and Lao PDR.

Sexual violence

All countries in Southeast Asia have criminalised rape, and a number have criminalised also other sexual violence offences such as sexual assault or molestation. Only one country, the Philippines, has comprehensive stand-alone laws on sexual violence, the Anti-Rape Law (1997) and the Rape Victim Assistance and Protection Act (1998). In many of the other Southeast Asian countries, national legislation fails to provide a legal framework that recognises all forms of sexual violence as crimes. Rape in marriage is not criminalised in some of the countries or there may be diminished liability as defined in other countries (see Table 3 below). In other contexts, the violence is trivialised through inaccurate and unhelpful descriptions such as ‘date rape’ or ‘outrages to modesty’.

Box 18: Language matters

Some scholars have looked at the language of sexual violence to see how words can affect what is thought about the reality of such violence and how the law is applied.¹²⁶ ‘Date rape’ is often seen as generally less severe or even acceptable as occurring at the hands of a person known to the victim. Some judges deem the trauma of ‘date rape’ to have been lessened because the victim knew her assailant and in their views, this could not be compared to the situation where she ‘had to endure the terror of an unknown kidnapper’ (Judge Hulme in *Boney v R*, a case from New South Wales)¹²⁷

¹²⁵ UN Women. *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on Standards and Good Practices*. 2013.

¹²⁶ Easteal et al. 2012.

¹²⁷ Cited in Easteal et al. 2012.

Table 3: Review of marital rape and sexual harassment legislation in Southeast Asian countries¹²⁸

Country	Is marital rape explicitly criminalised?	If not, can a wife or partner file a complaint?	Are rape perpetrators exempt if they are married to the victim?	Are rape perpetrators exempt if they marry the victim?	To protect against sexual harassment, do the following exist		
					Legislation	Civil remedies	Criminal penalties
Brunei Darussalam	-	-	-	-	-	-	-
Cambodia	No	yes	No	No	Yes	no	yes
Indonesia	Yes	n/a	No	No	No	no	no
Lao PDR	No	no	Yes	No	Yes	no	no
Malaysia	No	no	Yes	No	Yes	no	no
Myanmar	No	no	Yes	No	Yes	no	yes
The Philippines	Yes	n/a	No	No	Yes	yes	yes
Singapore	No	no	Yes	No	Yes	yes	yes
Thailand	Yes	n/a	No	No	Yes	no	yes
Viet Nam	No	yes	No	No	Yes	No	no

Narrow definitions of rape. Narrow definitions of rape that require the presence of force as an element of crime (which amounts to a resistance requirement) or that require vaginal-penile penetration, limit the ability of women to report and seek justice for sexual violence that is experienced by women. The CEDAW Committee has concerns about the narrow definition of rape in the current Lao PDR Penal Code and urges Lao PDR to widen the definition of rape to include any sexual relations without the woman's consent, in order to reflect the realities of sexual abuse experienced by women and to remove the exception for marital rape from the definition of rape. Other countries that use narrow definitions of rape, trivialise other kinds of rape, such as penetration of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person to lesser offences, such as 'carnal intercourse against the order of nature'.¹²⁹ The issue of how to define rape in law remains controversial, with a recognition that the shift to consent-based definitions and a broad range of prohibited acts has not achieved the hoped-for benefits of increasing convictions and shifting the focus in trials to the behaviour of the defendant.¹³⁰

128 World Bank. 'Protecting Women from Violence – Women Business and the Law'. 2016.

129 Malaysia Penal Code. Section 377A.

130 Kelly, L. 2005.

Classifying sexual offences in terms of morality or modesty. As one scholar notes, historically, the law of sexual violence has functioned to protect women's honour and their value as the property of fathers and husbands.¹³¹ This legacy is seen in some of the criminal laws in Southeast Asian countries which classify forms of sexual violence as a crime against morality or honour.¹³² Furthermore, the new Syariah Penal Code Order 2013 in Brunei Darussalam raises concerns that women will be exposed to punishments like fines and jail terms for such acts as out-of-wedlock pregnancies and adultery.¹³³ Several UN studies reveal that in countries where these laws are in force, women experience grave injustice, as they are more often charged with and found guilty of adultery and extra-marital affairs than men.

Sexual harassment and stalking. A particular legislative gap seen in criminal law in Southeast Asia relates to sexual harassment and stalking. While eight out of ten countries have legislation that may be applied to instances of sexual harassment, such legal protection does not cover all contexts or kinds of sexual harassment (employment, education, public places) nor do all such laws criminalise this violence and offer the victim a clear basis on which to access criminal justice. Where sexual harassment also constitutes rape or indecent assault, it may be covered by the relevant criminal prohibitions. However, beyond such conduct sexual harassment is often not covered by the criminal law.

Problematic defences. Laws that recognise 'crimes of passion', the defence of provocation, and allowing rapists to escape prosecution if they marry victims, are based on harmful gender stereotypes and treat violence against women cases differently than other violent crimes, minimising their seriousness. Traditionally certain defences have been available to male accused, which has lessened their legal responsibility for the act or their punishment. In the Philippines, the subsequent valid marriage between the perpetrator and the offended party extinguishes the criminal action or the penalty imposed for rape.¹³⁴ The Philippines also provides for the defence of provocation, which allows the husband to be exempt from criminal punishment for violence against his wife or daughter when finding them having sexual intercourse with another person.¹³⁵ In Cambodia, data from a non-governmental organisation found that in three per cent of the cases involving women, the victim ended up marrying the suspect. The NGO notes that 'whilst these cases make up a small percentage of the total, the fact that there are any at all ending in this way is shocking and disturbing.'¹³⁶ While the law does not exempt the perpetrator from criminal liability when marrying the victim, these cases illustrate the pressures by family members on the victim to 'save face' and have the victim drop the criminal process. The reason that marriage is seen by some as an acceptable outcome for rape victims seems to be the value placed on female virginity. Once a girl is no longer a virgin, in the eyes of much of Cambodian society, she no longer has any value and her future becomes a problem for her family, even if her virginity has been lost because she was raped.

3.3 Rates of reporting and attrition in the criminal justice systems in Southeast Asia

The available information in Southeast Asia, consistent with global studies, illustrates high rates of under-reporting, worrying levels of attrition at every stage of the criminal justice process, and low conviction rates

131 Kelly, L. 2005.

132 For example framing offences such as intent to outrage modesty or insult the modesty of a woman (Brunei Penal Code).

133 The Southeast Asia Women's Caucus on ASEAN (hereafter Women's Caucus).

134 Philippines, Anti-Rape Law (RA 8353) Article 266-C.

135 Philippines, Revised Penal Code Article 247.

136 Cambodian League for the Promotion and Defense of Human Rights. 'Getting away with it: The Treatment of Rape in Cambodia's Justice System'. 2015.

in gender-based violence cases. This is the situation irrespective of the legal tradition reflected in the criminal justice system, such as adversarial or inquisitorial, or whether there are plural justice systems where informal justice mechanisms operate alongside criminal justice mechanisms. See Table 4 for a summary of the legal systems found in the Southeast Asian region.

Table 4: Legal systems in Southeast Asian states¹³⁷

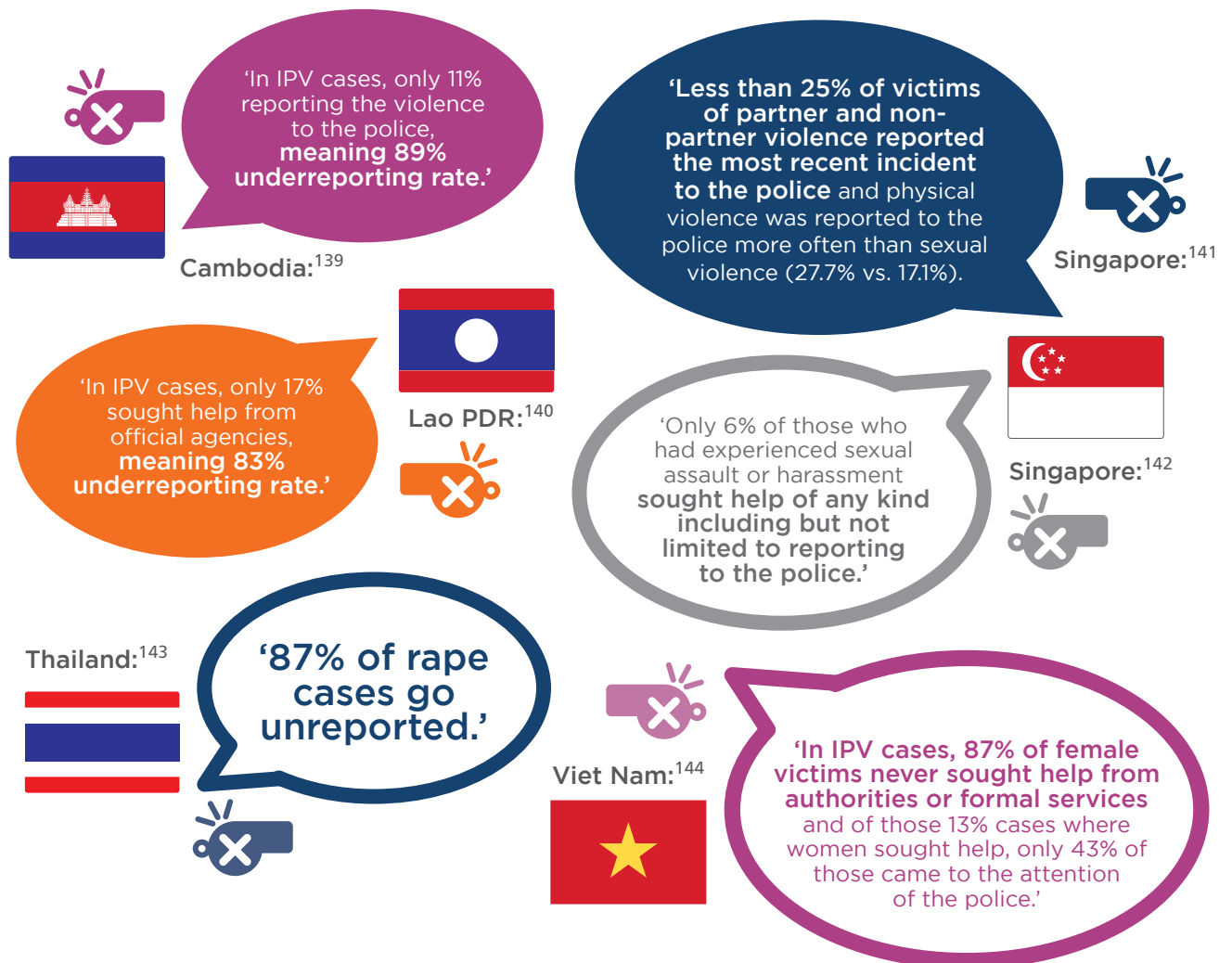
Country	Legal and criminal justice systems
Brunei Darussalam	Mixed legal system based on English common law and Islamic law The criminal justice system is adversarial.
Cambodia	Civil law system (influenced by the UN Transitional Authority in Cambodia), customary law, Communist legal theory and common law The criminal justice system is inquisitorial.
Indonesia	Civil law system based on the Roman-Dutch model and influenced by customary law The criminal justice system is inquisitorial.
Lao PDR	Civil law system similar in form to the French system The criminal justice system is inquisitorial.
Malaysia	Mixed legal system of English common law, Islamic law, and customary law; judicial review of legislative acts in the Supreme Court at request of the Supreme Head of the Federation The criminal justice system is adversarial.
Myanmar	Mixed legal system of English common law (as introduced in codifications designed for colonial India) and customary law The criminal justice system is adversarial.
The Philippines	Mixed legal system of civil law, common law, Islamic law and customary law The criminal justice system is adversarial.
Singapore	English common law The criminal justice system is adversarial.
Thailand	Civil law system with common law influences The criminal justice is hybrid (adversarial and inquisitorial aspects).
Viet Nam	Civil law system The criminal justice system is inquisitorial.

¹³⁷ The classification of the overall legal system is based on the Due Diligence Regional Report for Asia-Pacific and the Thailand Institute of Justice. 2016. An inquisitorial system is a legal system where the court or a part of the court is actively involved in investigating the facts of the case, as opposed to an adversarial system where the role of the court is primarily that of an impartial referee between the prosecution and the defence.

The problem of underreporting

There are concerns of chronic underreporting, particularly for certain forms of violence against women, such as intimate partner violence, rape and other sexual violence, among others. While it is challenging to get a clear picture of the underreporting problem in any country, comparing prevalence rates with recording rates and police-reporting rates in the region as well as specific studies on justice-seeking behaviour of gender-based violence victims providing some indication of the magnitude of the problem. One Cambodian prosecutor observed: *'Most cases involving violence against women are not resolved through the criminal court despite the domestic violence law for immediate protection measures and the criminal law to punish offenders. Judicial institutions continue to be considered as a last choice for conflict resolution and responsibility regarding filing or submitting complaints remains with victims. Female victims rarely decide to bring complaints to the court.'*¹³⁸

Diagram 5: Underreporting rates from studies in Southeast Asia



138 Cambodian prosecutor, interviewed during Training of Trainers course in Bangkok, May 2016.

139 Cambodian League for the Promotion and Defense of Human Rights. 2015.

140 National Commission for the Advancement of Women, Lao PDR. 2015.

141 'International Violence against Women Survey: The Singapore Report – Preliminary results of the study' 2010.

142 Association of Women for Action and Research (AWARE). 'Survey: 1 in 3 young people have faced sexual violence'. 2015. <<http://sacc.aware.org.sg/portfolio/survey-1-in-3-young-people-have-faced-sexual-violence-few-see-or-receive-help/>>

143 Thailand Development Research Institute. 'Factsheet on Rape: Some observations'. 25 July 2014.

144 UNODC, the Research Centre for Gender and Development and the European Institute for Crime Prevention and Control. 2011.

Box 19: Underreporting in intimate partner violence cases

Studies have found that a large percentage of IPV survivors want to stay in the relationship safely.¹⁴⁵ Women stay in violent relationships for emotional reasons ranging from love to terror. Some believe that their partners will change and the abuse will end, some have strong beliefs about keeping the family together, others are worried about reduced economic circumstances or losing their children, while others may be afraid of the repercussions if they attempt to leave. Reporting or seeking help might be seen to jeopardise the relationship. In a Lao PDR study, two-thirds of women victims chose to remain at home out of fear of disclosure of the violence and leaving home would lead to retaliation against themselves and their children as well as social stigma due to cultural and gender norms associated with separation and divorce.¹⁴⁶ Research from Cambodia and Lao PDR show that women experience several incidents of violence before making their first report. The Cambodian study, which found 11% reporting rates in IPV cases, found that the most common reasons women gave for seeking help were that they could not endure the violence anymore and that they were afraid the violence might worsen.¹⁴⁷ This is similar to the Lao PDR study which found that 64.2% of the 17% of IPV victims who reported had sought help because they could no longer endure the violence.¹⁴⁸

A lot of research has been conducted on the cycle of intimate partner violence. In the 1970s, Lenore Walker developed the concept of the cycle of violence to explain victims' behaviour.¹⁴⁹ She described three phases to intimate partner violence. The first is called the tension building phase which begins with anger, blaming and increased tension. Many women learn to recognise this tension building phase and try to control it by becoming nurturing and attempting to keep the peace. Often at this stage incidents are not reported to the police or, if reported, the case is minimised. This encourages the abuser to proceed to the next phase. The **violence phase** is the explosion of violence from the abuser. For women who have experienced violence before, a threat of violence can be disabling. The victims may be grateful that the violence ends and may consider themselves lucky that it was not worse, no matter how bad their injuries are. Then there is the **honeymoon phase**, the contrite and loving stage of the cycle. Following the violence, the abuser is loving and calm, and often begs for forgiveness and promises to change.¹⁵⁰

Box 20: Underreporting in sexual violence cases

A Southeast Asian report noted that one of the main reasons cited by victims of sexual violence for not making police reports is a fear of not being believed or not having

145 Lyon, E., Bradshaw, J. and Menard, A. 'Meeting Survivors Needs through Non-residential domestic violence services and supports: Results of a Multi-State Study'. 2008.

146 National Commission for the Advancement of Women, Lao PDR. 2015

147 Cambodian League for the Promotion and Defense of Human Rights. 2015.

148 National Commission for the Advancement of Women, Lao PDR. 2015

149 Walker, L. 'The Battered Women'. 1979.

150 Walker, L. 1979.

enough evidence.¹⁵¹ Other top reasons were being worried about how family and friends would react, and fear of public exposure. Women who experience sexual violence within relationships often disclose such violence to victim advocates, but are reluctant to have this legally documented. *‘[W]hen it comes to sexual abuse people generally tend to open up when they come here to say that “Okay, yes, I had psychological emotional and sexual violence.” But when it comes to let’s say documenting this down to apply for a PO [protection order], they would let us know all these things but they would not include the sexual abuse incidents in the PO application. It goes back to the thoughts of: “I don’t want to implicate my husband because it is so intimate to me, it is my relationship.” Because they know that the PPO [personal protection order] form is going to be read to him. And she doesn’t want the husband to know that she is also telling the courts about what happened ... About their sexual relations.’* Interview with an NGO in Singapore.

Attrition rates in the region

The few attrition studies in Southeast Asia are consistent with other global attrition studies that illustrate a concerning high level of attrition at every stage of the criminal justice process. Attrition refers to the process by which cases fail to proceed through the criminal justice system; those cases that are discontinued and thus fail to reach trial and or result in a conviction.¹⁵²

The UN Women multi-country study in Thailand and Viet Nam on understanding the criminal justice sector response to sexual violence highlighted the major points of attrition in criminal justice systems.¹⁵³

Stages of legal process	Tasks of state authorities	Attrition concerns
Initial contact and reporting stage	The police officer determines whether an offence has occurred, whether a report should be taken, and whether the complaint should be further investigated	<ul style="list-style-type: none"> ❖ Victims are turned away, deterred or discouraged at the initial reporting stage ❖ Victims are treated with disrespect and insensitivity ❖ Victim is required to tell her story multiple times ❖ Reports are refused ❖ Onus is on the victim to make a formal report ❖ Reports are taken and investigation is not conducted or delayed ❖ Police encourage mediation and settlement; or the victim withdraws

¹⁵¹ Thailand Institute of Justice. 2016, p. 55.

¹⁵² Definition from Lovett, J. and Kelly, L. ‘Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe’. Child and Women Abuse Studies Unit. London Metropolitan University. 2009.

¹⁵³ Skinnider et al, 2017.

Stages of legal process	Tasks of state authorities	Attrition concerns
Investigative stage	The investigators must identify and examine all evidence and determine whether a case should be referred to prosecution	<ul style="list-style-type: none"> ❖ Poor or inadequate investigation ❖ Limited access to or use of forensic evidence ❖ Mandatory invasive forensic examinations ❖ Lack of assistance, support or protection services ❖ No or very limited communication between the criminal justice system service providers and the victim
Prosecution and pre-trial stage	The appropriate officials (prosecutors) must determine whether to prosecute the case.	<ul style="list-style-type: none"> ❖ Long drawn-out proceedings ❖ Victims fear giving evidence at trial ❖ Prosecutors rely on myths when determining the credibility of victims and decide not to proceed
Trial stage	The judge must decide whether to convict the suspect.	<ul style="list-style-type: none"> ❖ No court support for victim ❖ Focus on physical or forensic evidence instead of victim's lack of consent

The available statistics in the region show a picture of a criminal justice system which is failing the few women who have had the courage to report the violence to the police, where many cases are filtered out of various stages, resulting in a disturbingly low number of convictions. Many such crimes are dismissed or the perpetrators who are found guilty are given light sentences. It illustrates a tendency to treat these crimes as lesser crimes, diverting them from the criminal justice system to informal compensation among families. Crimes that go unpunished feed a culture of impunity and lawlessness. Impunity weakens the foundation of societies.¹⁵⁴ The high levels of attrition at various points of the criminal justice system in gender-based violence cases means that the nature and extent of violence against women being dealt with by the criminal justice system continues to be rather limited. It also underscores the lack of confidence in the criminal justice system by women subjected to violence. The reality is that there is little likelihood of a conviction or satisfactory resolution. In Indonesia, conviction rates are exceedingly low and perpetrators rarely serve more than two years of a maximum 12 year-sentence, regardless of the severity of the crime.¹⁵⁵

¹⁵⁴ Quast, S. 2008.

¹⁵⁵ Research cited in Thailand Institute of Justice. 2016.

Table 5: Examples of attrition rates in select Southeast Asian countries

Stages of legal process	Cambodia [Study of rape cases]	Singapore [Study of partner and non-partner VAW cases]	Viet Nam [Study of rape cases]	Viet Nam [Study of domestic violence]
Initial contact stage		in 17% of complaints, police did not file a report	From reporting to investigation, attrition rates were 27% in cases of girl victims	
Investigative stage	53% of rape cases ended at some point before trial	in 30% of IPV cases, police gave warning and dropped the case	61% women victims in nearly 50% of cases dropped by police, the reason was 'no offence'	12% of reported cases to police resulted in criminal charge, meaning 88% drop out
Prosecution and pre-trial stage				in 12% of the cases police suggested the victim solve the problem herself inside the family or to contact another agency
Trial stage	23.5% of cases at trial were flawed or resulted in no conviction	12% of IPV and 30% of non-partner VAW reported cases were charged and convicted		1% of cases that went to trial resulted in conviction

In Cambodia, the attrition study found that those cases that dropped out before the trial stage included cases which ended with the payment of compensation from the suspect to the victim, cases which ended with marriage between the suspect and the victim, cases of rape inside marriage, and cases where the victim dropped the criminal complaint, for example because the suspect was a relative or a person with power and influence.¹⁵⁶ For those cases that went to trial, but ended without a conviction or with a conviction that was dubious, these included cases where there was a conviction, but the sentence was wholly or partly suspended, cases where the perpetrator was convicted of indecent assault instead of rape, and cases where there was a

¹⁵⁶ Cambodian League for the Promotion and Defense of Human Rights. 2015.

conviction, but the sentence was shorter than prescribed by the Criminal Code. In the cases that involved women raped by their husbands, in all of the cases the rape had happened repeatedly and was part of a long-term pattern of violence and abuse by the husband. However, there was only one of the cases that involved a trial and a conviction; the other nine cases all ended with the couple getting divorced and with no prosecution. In Viet Nam, research showed that incidents in reporting increased as victims got older and once they got divorced from their abusive husbands.¹⁵⁷

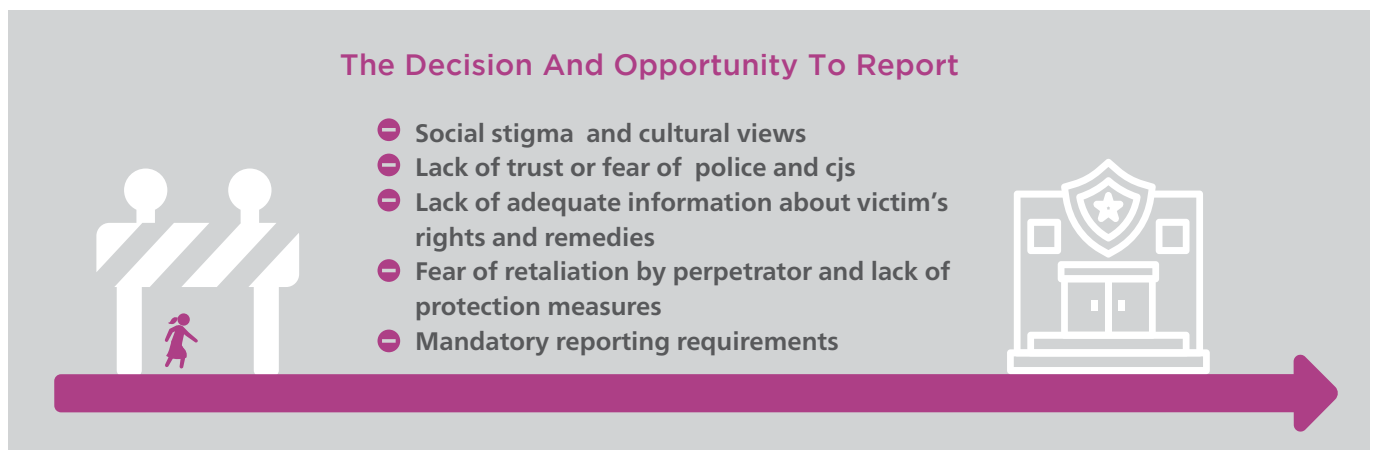
Box 21: Research from Malaysia ¹⁵⁸

Research on a sample of sexual crime cases found a high rate of discharge not amounting to acquittal (DNAA) and a low rate of conviction of those proceeding to trial. In 45 per cent of all cases, the verdict is DNAA. In 31 per cent of cases the accused plead guilty. In the cases that went to trial, only 4 per cent resulted in conviction.

3.4 Challenges experienced by women in accessing criminal justice systems

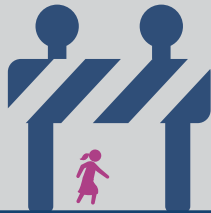
This section highlights some of the studies that describe a number of common barriers and challenges faced by women in accessing criminal justice systems in Southeast Asia. Women who are subjected to violence face numerous legal, social and cultural, procedural and institutional hurdles that influence their decision to report and cooperate with the criminal justice system. Women who have been subjected to violence have experienced a traumatising event, and especially with repeated violations often seen in intimate partner violence there is an undermining of the self and trust in others. When women actually do report the violence, many women view the response of the criminal justice system as being like a ‘second assault’ as a consequence of the indifferent, insensitive or harsh treatment by police, prosecutors and judges, where the violence is often minimised, dismissed or blamed on the victims. There are a number of factors that contribute to this ‘secondary victimisation’, which is the victimisation that occurs not as a direct result of the criminal act but through the inadequate response of criminal justice institutions and providers to the victim.¹⁵⁹

Diagram 6: Common hurdles women face along the criminal justice process



¹⁵⁷ UNODC, *Research Centre for Gender and Development and the European Institute for Crime Prevention and Control*. 2011.
¹⁵⁸ Lochhead, J. and Tan Pek Leng. ‘Seeking Justice for Victims of Sexual Crime’. *Women’s Centre for Change Penang*. 2009, p. 25.
¹⁵⁹ *Updated Model Strategies and Practical Measures*, para. 15 (c).

The Reporting Process



- Limited access to police with gender-sensitive training
- Insensitive or indifferent treatment by police
- Trivialisation of the violence
- Lack of privacy
- Onus is often on the victim to initiate formal report
- Emphasis on mediation or informal settlement
- Lack of legal assistance



The Investigation And Prosecution



- Ineffective and insensitive investigations
- Challenges in the collection of evidence
- Overreliance on physical evidence
- Challenges with slow processing of VAW cases
- Corruption



The Trial



- Problems with evidentiary rules and criminal procedures
- Discriminatory evidentiary rules
- Testimony of women in court
- Limited sentencing options for IPV perpetrators
- Traumatizing courts



While women want to prevent further attacks, seek protection, and want denunciation for the violence and justice, they balance these factors with the fear of not being believed or of being blamed for the violence, and fear of public exposure. Women often disclose first to family and friends whose response can influence the women's decision to report. The challenges women encounter have a bearing on the problems that confront criminal justice providers when investigating, prosecuting and adjudicating cases involving violence against women. The development of good practices requires an appreciation of the challenges from the perspective of both the victim and the criminal justice provider.

The Decision And Opportunity To Report

Social Stigma And Cultural Views

- ❖ A multi-country study in Thailand and Viet Nam found that the decision to report rape is difficult for women, as there are socio-cultural taboos associated with their experience of violence. Sexual violence often raises questions of morality and honour. Victim blaming is common. Victims themselves may believe they have engaged in certain behaviours that are deemed to have transgressed norms on what

is culturally appropriate and are less likely to report and seek assistance.

- ❖ Studies on domestic violence in Lao PDR, Cambodia and Viet Nam show that intimate partner violence is often silenced as a private matter. Patriarchy and prevailing interpretations of moral norms, culture and religion places women as the primary bearers of honour and tradition. In Viet Nam, according to the National Study, many women think that violence in relationships is 'normal', and that women should tolerate and endure what is happening to them for the sake of family harmony.
- ❖ A survey in Singapore found victims are easily silenced and isolated by shame, with 11.3% of women surveyed not reporting out of shame and embarrassment and 18.2% wanting to keep it private.

Lack Of Trust In Or Fear Of The Police And Criminal Justice System

- ❖ A study in Thailand found high levels of mistrust and fear among certain groups of women in relation to the justice sector, particularly law enforcement. For instance, some ethnic minority women and sex workers spoke of the fear of sexual violence being perpetrated by the police if they tried to report.
- ❖ A regional study noted that for women experiencing trafficking or domestic violence who are migrants, they report fear of deportation as a strong factor when deciding whether or not to report.
- ❖ A survey in Singapore found that reasons that women did not report to the police included: not being believed (3.2%); did not think police would do anything (6.5%) and did not think police could do anything (11.7%).

Lack Of Adequate Information About Victim's Rights And Remedies

- ❖ A study in Lao PDR found that women had very limited knowledge of legal options in relation to violence against women. Just one-third of urban women and less than ten per cent of rural women knew about the Law on Development and Protection of Women. When comparing women's legal knowledge of the domestic violence law based on whether or not they have experienced partner violence, women who were victims were less aware of the law than were those who had not.
- ❖ In some countries, for example, Cambodia, there is no law that contains provisions on victim's rights.

Fear Of Retaliation By Perpetrators And Lack Of Protection And Support Measures

- ❖ Another factor that could prevent women from reporting is the fear of repercussions from perpetrators. Women and their families are often at greatest risk of violence after their departure, or the offender's forced departure from the family home. Added to this is the possible detrimental effect of their economic well-being as a consequence of seeking help for violence, especially in domestic violence situations or sexual harassment in the workplace.
- ❖ In Viet Nam, according to a national study, about 1/5 of abused women left home for at least one night, but there were practically almost no options for women about where to go, and women usually returned home for the sake of the family.

A Mandatory Reporting Requirement Might Limit Women From Seeking Broad Assistance And Help

- ❖ Some of the domestic violence laws in Southeast Asia impose mandatory obligations on individuals, legal entities or organisations to report the incident of violence to the authorities. For example, in Lao PDR, the domestic violence laws require individuals, legal entities or organisations that have found or seen the use of violence against women to immediately notify or report the incident to village authorities or police. This might have a chilling effect on women who seek help outside the criminal justice system.

The cultural belief that women are inferior to men contributes to dismissing domestic violence as the man's role in correcting his wife's behaviour, **seeing domestic violence as being "advice for the wife", a family problem, not a crime.**

*Vietnamese prosecutor.*¹⁶⁰

“

Women fear to be revenged, or to lose face when reporting the case

*Laotian prosecutor.*¹⁶¹

”

Even though the investigation is supposed to be confidential, **villagers still know about it and think badly about the women, so often the victims decide to hide the fact instead of reporting it**

*Cambodian prosecutor.*¹⁶²

The Reporting Processes

Limited access to gender-sensitive trained police

- ❖ A survey from an NGO in Singapore found that the understanding of social and psychological realities of violence against women (e.g. trauma-informed understanding) is low and that there is very little gender sensitization in law enforcement personnel.
- ❖ Other research found that men continue to account for most of the police force, with women remaining severely underrepresented. This has a chilling effect on women in cooperating further with the criminal justice system, as well as on other

¹⁶⁰ Vietnamese prosecutor, interviewed during Training of Trainers course in Bangkok, May 2016.

¹⁶¹ Laotian prosecutor, interviewed during Training of Trainers course in Bangkok, May 2016.

¹⁶² Cambodian prosecutor, interviewed during Training of Trainers course in Bangkok, May 2016.

women who decide not to report out of fear that the police will not take their cases seriously.

- ❖ Research in Thailand on sexual violence from the perspective of the victims found that, as a result of a failure to understand the particular nature of sexual violence and the specific needs of victims, women were often confronted by a lack of gender sensitivity from the moment they enter a police station.

Insensitive or indifferent treatment by police

- ❖ The multi-country study in Thailand and Viet Nam found that high attrition rates at the reporting stage were linked to the victim's negative initial experience with the predominately male police. Respondents noted that treatment by police was in many cases unprofessional and degrading without regard to the trauma they had suffered.
- ❖ The multi-country study in Thailand and Viet Nam discussed how a number of myths and stereotypes that underpin beliefs about rape are reflected in biases of criminal justice providers. For example, police officer had specific ideas as to how a real rape victim should behave, and if the complainant did not behave in the expected manner, the police officer would likely not proceed with the case on the grounds that there was no credible evidence. When women victims report violence in ways that go against gender stereotyping, or do not match traditional gender ideas of how women victims should behave, which focus on their demeanour and appearance, issues of the victim's credibility become the focus of the investigation rather than investigating the credibility of the accusation.
- ❖ Research in Thailand found that sometimes the discrimination is overt and explicit, while often it is manifested in a lack of gender sensitivity or awareness and in reliance on assumptions and gender norms, which leads to re-victimisation of women survivors of violence and undermines women's faith and confidence in the justice system.
- ❖ One regional study found that a number of negative attitudes and sentiments about violence against women were quite pervasive amongst criminal justice providers in their countries.
- ❖ Research in Cambodia found that the behaviour of adult women who report rape is often scrutinized by police, which indicates an attitude that it is their responsibility not to do anything that might put them at risk of rape. When women are subjected to this kind of questioning, with its implication of blame, it is less likely that they will want to pursue the case to its conclusion.
- ❖ Research in Thailand noted that police officers sometimes imply that a woman is at fault for an assault, passing comment on her dress or behaviour and not effectively investigating the matter.

Trivialisation of the violence

- ❖ Research finds that violence by known men continues to confound criminal justice responses, and such victims are treated as less credible.

Lack of privacy

- ❖ The study in Thailand and Viet Nam highlighted cases where the traumatised victim had to sit in unfriendly spaces without privacy for many hours, unable to change

clothes or wash or even use the toilet; otherwise she may be blamed for compromising the evidence. In some instances, the victim had to wait in the same room as the suspect.

- ❖ In Malaysia, an NGO report looks at the concerns about the lack of anonymity for victims. At the reporting and investigation stage, a woman's name, picture and workplace may be used in salacious media coverage.

The onus is often on the victim to initiate a formal report

- ❖ In Thailand, the short statute of limitation bars victims from filing a report after three months of when the incident occurred.
- ❖ In a number of countries (e.g. Thailand, Viet Nam), certain gender-based violence crimes are classified as 'crimes against the person' which requires the victim to consent to making a formal denunciation or consent to the initiation of a criminal investigation.

Emphasis on mediation or informal settlement

- ❖ One regional study found that the primacy of protecting the family institution was high in most of these countries. This led to settling such cases through informal means rather than through the criminal justice system, such as grassroot reconciliation in Viet Nam, which meant that both the abuser and the victim were held responsible for the violence.
- ❖ In Thailand, research on domestic violence found that many police officers, prosecutors and judges continue to treat domestic violence as though it is a private matter which should be resolved exclusively within the family. The reliance on the reconciliation-centred approach favoured by criminal justice providers and under the Domestic Violence Act may hinder the development of more robust approaches that are necessary in respect of domestic violence.
- ❖ Research from Thailand found that many women were often told by the police that they should go home and resolve the problem with their partner, even in cases of repeated violence. Research in Viet Nam found that in a number of cases, the police summoned the beating husband to the police station and simply warned him, and the violence continued.
- ❖ Cambodian research mentions the pressure to resolve such violence outside the criminal justice system through informal compensation, allowing the perpetrators to escape prosecution. Research also found that many rape cases end with a payment of money by the suspect to the victim in return for the victim dropping the case. These payments are often negotiated by the police, prosecutors or judges, and after the victim drops the complaint, the official involved closes the criminal case.
- ❖ Research from Cambodia notes that 'the widespread use of compensation to settle rape cases is harmful in several ways. It implies that rape is not a criminal matter and that it is not serious enough to be dealt with by the courts. It also undermines the deterrent effect of the law: all Cambodians know that criminal matters can be resolved with money and as a result there is very little disincentive to commit serious crimes like rape. Finally, when cases are settled at the police station, the information about those cases goes no further. This means that data about reported rape cases is lost and that rape appears to be a much less widespread problem than it really is. As a result, the resources necessary to begin to tackle the issue remain seriously lacking.'

- ❖ Research in Viet Nam found that reconciliation never addresses the root causes of domestic violence. According to UNODC research, in 77% of the cases reconciliation did not produce the expected outcome and the violence continued. In the UNODC research, women mentioned that the police quite often recommended that the victims solve their problems themselves or try reconciliation.

Lack of legal assistance

- ❖ Research from Viet Nam shows that most domestic violence cases were not brought to the attention of legal aid providers, and thus victims do not receive sufficient legal advice on how best to deal with the violent situation.



The first time I went to him (the policeman) he was kind of like “Do you really want to do this? (report the domestic violence). I think you could talk to your boyfriend.” ... I had been to the police station the whole week and he told me “You should go back to your boyfriend. You are still young and you look good.” These kinds of things, yeah it normalises domestic violence.

A survivor of domestic violence spoke of her experience at the police station in Thailand.



Box 22: Victim satisfaction surveys

Victim satisfaction surveys and what they tell us

Singapore

Victim satisfaction with the police actions was part of the questions in the national survey.¹⁶³ Victims who said they were dissatisfied with the police response were not asked specifically why they were not satisfied, but all victims who reported to the police were asked to suggest ways in which the police could have been more helpful. Over one-quarter (27.7%) of victims said that the police should have charged the perpetrator, and a similar proportion (25.5%) said that the police officer should have taken their complaint more seriously and been more supportive. Nearly one in five victims (19.1%) expected the police to respond more quickly than they did; 15% would have liked more information about the progress of the case or would have liked more information and support on the legal procedure; 8.5% said the police officer should have given them protection.

¹⁶³ International Violence against Women Survey: The Singapore Report – Preliminary results of the study”. 2010.

Thailand

Thai people who are more conservative tend to have high confidence in the police officer. That is older people, female, who have low education and low income tend to have high confidence in the police officer. People who have been victimised before and are high in fear of crime tend to have low confidence in the police officer.¹⁶⁴



And I saw that there are a group of women who approached the police station and quite a high number of them were dissatisfied with the kind of services they had received. I think that one of their main wishes was that “they had followed up with me on my care, been more supportive” etc.

NGO staff member in Singapore.



The investigation and prosecution

Ineffective and insensitive investigations

- ❖ A multi-country study in Thailand and Viet Nam noted that victims often are interrogated numerous times by male investigators, experience long delays and undergo insensitive forensic examinations by male forensic officers.
- ❖ An incident-focus approach to investigations presents challenges in domestic violence situations. Focusing on the most recent incident rather than the longer-term patterns of abuse, can result in lesser charges.
- ❖ Research shows that poor investigation leading to a lack of corroboration evidence leads to over-reliance by the police on the victim’s statement and the victim’s willingness to pursue the complaint. Police officer should build a case even when a victim cannot or will not testify.
- ❖ A multi-country study in Thailand and Viet Nam found that there is often a lack of guidance for investigators and prosecutors on how to deal with often unique challenges in gender-based violence cases. These include dealing with the requirement of consent; whether there is proof of injury or other physical evidence of struggle; the time-lapse between the alleged incident and the victim’s bringing it to the attention of the authorities; the victim’s background and sexual history; and the nature of the relationship between the victim and alleged perpetrator, as these are often determinative criteria in decisions to pursue a prosecution and in the courts’ decisions.

¹⁶⁴ Sahapattana, P. and Cobkit, S. “Factors affecting Public Confidence in the Thai Police”. Undated. <http://www.the-aaps.org/wp-content/uploads/2015/05/2.Sahapattana-Cobkit_Factors-affecting-Public-Confidence-in-The-Thai-Police.pdf>

- ❖ Consent is key to differentiating lawful from unlawful and harmful behaviour. Determining consent is often complicated as such violence is often done in private, with no witnesses. Violence against women is much more likely to occur in private than violence against men.

Challenges in the collection of evidence

- ❖ Research in Viet Nam found that investigators believe that victims bear 'typical Asian women's feeling of shyness, endurance, acceptance' so that they do not recount fully the violence that they have suffered.
- ❖ Prosecutors in Cambodia noted that the challenges include victims destroying evidence without realising it (such as going to the toilet or washing) or because they report the crime late so that it is difficult to find physical evidence.

Overreliance on physical evidence

- ❖ Evidentiary rules often treat physical evidence as essential to proceeding with a criminal charge, which is challenging in such cases where there is delayed reporting or there is a relationship between the victim and the perpetrator. A number of the electronic survey responses noted that a medico-legal report was mandatory in order to proceed with prosecuting cases involving violence against women. A response from Cambodia noted that while there is no legal requirement for a medico-legal or forensic report, in practice proof of injury in medical evidence is required in rape cases.
- ❖ There are a number of challenges with forensic examinations. There can be confusion given the forensic examiners' dual purpose; they are medical practitioners who are acting as agents of law enforcement, to address the immediate health needs of women as well as to ensure rigorous evidence collection. Often, to proceed with any criminal cases, a victim's injuries must be documented by a forensic medical expert who might be in limited numbers in a country. While little research has been done on this issue in Southeast Asia, common challenges might apply that have been identified in other research, including: victims requiring referrals from a law enforcement organ before proceeding to a forensic expert; being charged for the examination; distances victims have to travel; and short available working hours, meaning victims who are raped at night will have to wait hours for the examination.

Challenges with slow processing of VAW cases

- ❖ Delays and protracted criminal proceedings can have a negative impact on the victims. Research has found that slow and delayed criminal justice processes can lead to additional trauma for the victims, creating reluctant witnesses, and causing the case to collapse, be withdrawn or discontinued.
- ❖ In Malaysia, one NGO studied the length of time in prosecuting sexual crimes: just over half of the case took less than a year, 83 per cent were dispensed with within two years and one in six cases took more than two years. This research also noted the many adverse effects of a long trial period, one being that the case was more likely to result in a discharge not amounting to acquittal. Another issue associated with an increased length of time is the serious difficulties this causes for key witnesses such as medical personnel.

Corruption

- ❖ Police officer may request payment for fuel to investigate the crime scene, or for providing forms to victims to seek care or the administration of a rape kit by health services. This can be due to lack of resources for criminal justice agencies as well as corruption.
- ❖ An NGO mentioned that one of the main challenges Cambodian women face is corruption in the judicial system. 'LICADHO's monitors, some of whom have 20 years' experience working in the field, have often received information about corruption from victims and other sources at court or elsewhere. All of them stated that in their experience corruption is rife and that at every stage of a case where there is an interaction between a victim and a public official, there is a possibility that there will be some kind of corrupt transaction.'



In Malaysia, it appears that the prosecution of offenders is a lengthy process and often only occurs long after a complaint has been made making it difficult for victims or witnesses to recall details.

NGO staff member



The trial

Problems with evidentiary rules and criminal procedures

- ❖ In some countries, shortcomings in the law regarding sexual violence stem from evidentiary standards and procedural rules. For example, in many Muslim countries following shari'a, two men must witness the act of violence. In Brunei Darussalam, women also face more difficulty in the gathering of evidence to prove their innocence, especially in cases of rape or adultery where four male witnesses are required and a woman herself cannot be a witness as she is not an equal in the eyes of this law – the Syariah Penal Code Order 2013. Circumstantial evidence is often inadmissible, making the victim the sole source of evidence. Victims are often required to testify several times and often in the presence of the accused. Evidentiary rules may allow cross examination on sexual history, require corroboration, and allow for adverse inference in delayed reporting.
- ❖ Research in Malaysia highlights the existence of myths and stereotyping that can influence the discriminatory application of evidentiary rules in cases involving sexual violence. This includes issues of corroboration; credibility and inconsistencies in testimony; false reporting; consent; injuries; past sexual history; and late reporting.

Traumatising courts

- ❖ Despite the fact that trials can be conducted quite differently depending on the jurisdiction, they are often traumatising events for the victims. In some jurisdictions, trials can be quite lengthy, requiring live testimony and cross examination. Other jurisdictions allow for the sitting judge to read the case file in advance, which include detailed notes of the investigating judge's investigation, such as interviews of witnesses. Even under the best circumstances, being interviewed, testifying or participating at trial can be an intimidating experience.
- ❖ Most victims are unfamiliar with courts and trial proceedings and this unfamiliarity may raise feelings of anxiety and fear of the process.

Testimony of women in court

- ❖ According to a Cambodian prosecutor, often witnesses in these kinds of cases do not want to testify. A Malaysian prosecutor also noted a number of challenges relating to the testimony in court, including where the trial takes place long after the incident and the victim finds it difficult to recall the fact of the case or sometimes they do not want to remember a bitter experience that had happened previously. The victim feels uncomfortable, scared and ashamed especially when the accused person is in the same court room. Prosecutors from Brunei Darussalam mentioned that the reluctance to testify and inconsistency of evidence are challenges prosecutors face in handling gender-based violence cases.
- ❖ There are also many instances where the interpretation of evidence by judges using negative gender stereotyping favour perpetrators and challenge the credibility of the women victims.
- ❖ Research in Malaysia compiled the number of times a particular issue was raised by the defence in cross-examination. This illustrated the influence of myths and stereotypes. The issues included lying/inconsistencies, post-offence behaviour, no injury, false reports, delay in reporting, behaviour, prior relationship, consented to act, drugs and alcohol, and clothing.

Limited sentencing options for IPV perpetrators

- ❖ Prosecutors often complain about the challenges in dealing with reluctant victims who do not want to be witnesses during criminal court cases. One reason for reluctance in domestic violence cases is the limited range of sentencing if convicted – primarily incarceration for domestic violence, which appears to be the most common form of punishment for all forms of violence against women in Southeast Asia. In many countries, it is shown that there is a tendency to 'down-criminalise' the offence when enforcement agencies prefer to intervene informally. Police officer, for example, have been shown to prefer to not deal with the perpetrators by entering them into the formal system of criminal justice (e.g. at the very basic level, by preparing investigation papers and applying an order to investigate) even when the act committed is parallel to that of an act that would ordinarily be dealt with accordingly if committed by strangers.

“

There is no difference between being raped and giving evidence as a key witness at the trial of your alleged rapist, except that this time it happened in front of a crowd. Some victims have even surmised that this “second rape” is more traumatic than the first

*Quote from Women’s Centre for Change in Malaysia.*¹⁶⁵

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¹⁶⁵ Women’s Centre for Change (WCC) Penang. ‘Seeking More Effective Prosecution of Sexual Crimes: Background Paper for Dialogue with Prosecutors’. 2007.



**PART II:
A GENDER-
RESPONSIVE
CRIMINAL
JUSTICE
CONTINUUM**

—

**GOOD PRACTICES
FROM SOUTHEAST ASIA**



PART II: A GENDER-RESPONSIVE CRIMINAL JUSTICE CONTINUUM

‘The intelligent and enlightened treatment of the complainant is critical to the success of a criminal justice response to violence against women. ... [T]he best evidence which is essential to successful prosecution can only be gleaned from the best treated complainant (i.e. the victim). Intelligent and enlightened treatment of the complainant from the human perspective thus becomes the critical key in the success of the police function of law enforcement.’¹⁶⁶

Parts II and III review good practices in providing gender-responsive criminal justice from Southeast Asia. This Part focuses on good practices at each stage of the criminal justice continuum. The main stages are described in deliberately broad terms to take into account the variety of legal traditions in the region and the differing mandates and tasks done by criminal justice actors in the different countries. The next Part explores common elements of good practices such as comprehensiveness, coordination, specialisation, partnerships and monitoring and accountability.



¹⁶⁶ Gilmore and Pittman as cited in Kelly, L. 2005.

Box 23: Redefining what ‘success’ means in criminal justice

Redefining ‘success’ in a gender-responsive criminal justice response shifts from looking only at system-centred goals of numbers of prosecutions and convictions to victim-centred ones, that of having a well-treated complainant. Even though the criminal justice outcome might not be what the victim hoped for, given the complex and challenging nature of these cases, being taken seriously, treated in a professional and respectful manner, provided with information and options, creates a sense of having been treated fairly and can restore social connection. Research shows that the way victims are treated (i.e. with dignity, respect and empathy) is as important as the eventual outcome of the case.¹⁶⁷ For instance, in those cases that resulted in acquittals where the victims were supported throughout the process, while they were disappointed in the outcome none of them regretted pursuing the case.



Real reform of the criminal justice system will have begun when reports of sexual crime by known offenders, in contexts where the complainant could be seen as ‘taking risks’ (such as accepting a lift, an invitation for a cup of coffee, or having consumed alcohol voluntarily), are not dealt with as an ‘exercise in scepticism’, but rather as a report of serious crime which requires dedicated investigation and evidence gathering. We will also know that reform has taken deep roots when defence barristers act more ethically and choose not to invoke sexist stereotypes, however effective they might be, in their advocacy.¹⁶⁸



1. Crime prevention and early detection

Crime prevention and early detection are stages along the criminal justice continuum that can involve various criminal justice providers and other stakeholders, including other governmental sectors and civil society. Recognising that prevention strategies cover primary, secondary and tertiary strategies,¹⁶⁹ that they should be comprehensive and multi-sectoral, and that they should address the root causes of violence, this report focuses on crime prevention actions predominantly undertaken by criminal justice agencies and highlights early detection.

¹⁶⁷ Klein, A. “Practical implications of current domestic violence research, Part II: Prosecution”. National Institute of Justice, United States of America. 2008.

¹⁶⁸ Kelly. 2005.

¹⁶⁹ WHO defines prevention activities at three levels: primary prevention (stopping violence from occurring); secondary (immediate responses after violence has occurred to limit its consequences) and tertiary (longer-term treatment and support for victims of violence to prevent further adverse effects), as discussed in OSCE. 2009.

1.1 Formulation of criminal and protection laws in victim identification

Part of a successful strategy to prevent the occurrence of violence against women is to ensure that such violence is effectively criminalised and prohibited by law. Victim identification depends greatly on how the criminal and civil protection laws are formulated, as this establishes who is eligible for protection and criminal justice.

Box 23: Redefining what ‘success’ means in criminal justice

Article 14 urges Member States to:

- ❖ Ensure that all forms of VAW are criminalised and prohibited
- ❖ Be able to prohibit or restrain individuals from harassing, intimidating or threatening women
- ❖ Laws on sexual violence protect all persons against sexual acts that are not based on the consent of both parties

The international standards call for the criminalisation and prohibition of all forms of violence against women. Furthermore, it is considered good practice to have the criminal offences written as broadly and expansively as possible; not condoning myths or stereotypes; and framing the violence as a violation of physical and/or sexual freedom and integrity rather than solely as a violation of morality, honour or decency.¹⁷⁰



Good practice : gender-specific language

It is considered good practice for legislation to be gender sensitive, including the consideration of using gender-specific language in defining criminal offences or specifically creating an offence of violence against women.¹⁷¹ Doing so acknowledges violence against women as a form of gender-based discrimination and addresses the particular needs of women victims.¹⁷² For instance, in Singapore, as with the England and Wales criminal law, the Singaporean Criminal Code differentiates between rape (which the law sees as gendered, with the victim being a woman and the perpetrator a male), and a separate gender-neutral offence of sexual assault by penetration.¹⁷³ Another example is found in the Philippines which has one of the few pieces of criminal legislation in Southeast Asia that is gender-specific, the Anti-Violence Against Women and Their Children Act of 2004 (Republic Act No. 9262). This law includes a specific definition of violence against women with a focus on intimate partner violence. A constitutional challenge was presented against the law, and the law was upheld by the Supreme Court of the Philippines.¹⁷⁴

¹⁷⁰ UNODC. *Blueprint for Action*. 2014, p. 38.

¹⁷¹ UNODC *Blueprint for Action*. 2014, p. 38.

¹⁷² UN Women “*Handbook for Legislation on Violence against Women*” 2010.

¹⁷³ *Singapore Criminal Code*, sections 375 and 376.

¹⁷⁴ *Jesus Garcia versus The Honorable Ray Alan T. Drilon, Presiding Judge, Regional Trial Court-Branch 41, Bacolod City, and Rosalie Jaype-Garcia, for herself and on behalf of her minor children. Republic of the Philippines Supreme Court Manila, GR 179267, 25 June 2013.*



[O]ne important case that we decided here is about a husband questioning the constitutionality of the Violence against Women and Their Children law. Here in the Philippines men are objecting to the bias in favour of women and discrimination against men. The complainant in this case petitioned that men are discriminated upon and denied equal protection of the laws. However, the Supreme Court said that this is not so, **the law is constitutional because women need protection and the court relied on the statistics saying that many women are victims of violence at home and in intimate relationships with men so the constitutionality of the law itself was upheld because of the reality that more women are victims than the other way around.**

Judge from the Philippines



Good practice : legal definitions that fully capture the reality of the victim's experience of violence

Ensuring that legal definitions fully capture the reality of the violence experienced by women in all its manifestations is essential to ensuring access to justice and protection for all victims. The type of violence should be defined clearly, and physical, sexual and psychological harm should be punished. The definition of who constitutes a victim and who is a perpetrator should be broad enough to include various relationships. Innovative practices are those that specifically counter the accepted traditional criminal justice approaches, as these approaches continue to be confounded by the fact that violence is most often committed by men known to the victim.

Addressing the repetitive nature of violence against women

The common reality for many victims of intimate partner violence is that they experience different types of violence (e.g. physical, sexual, emotional or economic violence) involving a number of acts that form a pattern of controlling and coercive behaviour. Reflecting the repetitive nature of domestic violence, the Penal Code in Viet Nam includes an offence of maltreatment or abuse of family members, including spouses (article 185). This offence criminalises repeated acts of violence, which can include either physical and emotional violence or both, that occurs over a period of time.

For some victims of sexual violence, the reality is that they may experience a course of conduct or series of actions that may differ in kind, which taken as individual incidents may not amount to criminal behaviour and seem not more than a nuisance, but as a series of acts they constitute systematic intimidation, often with the constant presence of threat and the danger of escalation into life-threatening attacks. One of the few pieces of legislation in Southeast Asia that specifically refers to and defines stalking is the Philippines Anti-Violence Against Women and Their Children Act of 2004. It provides that 'stalking refers to an intentional act

committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof.’.

Box 25: Innovations in criminalisation from other countries ¹⁷⁵

England and Wales Serious Crime Act 2015

Section 76 ‘Controlling or coercive behaviour in an intimate or family relationship’

England and Wales have recently amended its law to provide for a new domestic violence criminal offence targeting ‘patterns of coercive and controlling behaviour’. Coercive control is broadly defined as an act or pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuses that is used to harm, punish, or frighten a victim. Domestic violence perpetrators who engage in coercive control do things like limiting the victim’s contact with family and friends, controlling her access to money and determining aspects of the victim’s everyday life, such as when and what she eats. This definition shifts the emphasis from single incidents of physical or psychological violence to patterns of conduct that are more typical of domestic violence.

While some criminal law provisions can cover non-physical violence, such as psychological or economic violence, these definitions are often vague, broad and ambiguous. They are often not used in domestic violence cases to prosecute perpetrators, or conversely, they can be used by the perpetrator to claim that the victim psychologically abused them by ‘nagging them’ thus provoking the physical violence. By focusing on a pattern of domination instead of individual acts of psychological violence, the concept of coercive control is designed to avoid turning the law against the victim and treats the assault on the victim’s autonomy with the seriousness it deserves. It also acknowledges that the cumulative impact of controlling behaviour is more harmful than isolated incidents of physical violence.

Encompassing a broad range of acts

With respect to the offence of rape, taking into account the full range of acts that can encompass rape, such as anal rape or penetration with an object or other body part, counters the traditional legal thinking about the nature of rape, which considered that penile penetration of the vagina has the potential to cause greater physical and psychological suffering than other forms of bodily penetration. It also counters the concern that narrow acts translate into high thresholds of evidentiary standards, reliance on the results of the examination of the vagina and detection of sperm and the challenges in cases involving sexually mature female victims and victims who delay reporting, or who contaminated the forensic evidence by washing after the rape. The broadening of the scope of the prohibited acts in the rape provisions in the recent amendments in both Thailand (section 276, Criminal

¹⁷⁵ Global Rights of Women “Coercive Control is now a crime in the UK”. <<http://globalrightsforwomen.org/2015/02/06/targeting-domestic-abuse-in-the-united-kingdom/>>

Code Amendment Act 2007) and Viet Nam (section 141, Penal Code amendments in 2015) allows for the possibility of more victims of rape going forward with their cases because their experience fits into the legal definition.

With respect to other offences of sexual violence, the sexual acts should be defined broadly, with penetration not a prerequisite for criminalisation. In Indonesia, a draft 'Elimination of Sexual Violence' Bill is being discussed in Parliament, which seeks to expand the current limited scope of sexual crimes defined in the Criminal Code. The Bill see sexual violence as any act of condescension, humiliation, attacks and/or other acts against the body associated with sexual passion, one's sexual desire and/or reproduction function forcibly against someone's will, and/or other actions that cause a person to be unable to give consent in a free state due to the inequality of power relations, gender relations and/or other causes, which result or may result in suffering or pain physically, psychologically, sexually, economically, socially, culturally and/or politically. It lists nine (9) forms of sexual violence: sexual harassment; sexual exploitation; coercion of contraception; coercion of abortion; rape; coercion of marriage; coercion of prostitution; sexual torture; and sexual slavery.



We have tried to have this bill seen as a priority in Parliament but it is very difficult ... The main objectives of this sexual crime law are that everyone should understand more about violence and the needs of the female have to be recognised. [Victims of sexual violence] need different treatment

Interview with Singaporean justice provider.



With respect to intimate partner violence, in the Philippines, the Anti-Violence Against Women and Their Children Act of 2004 criminalises all four forms of domestic violence (physical, sexual, psychological harm or suffering, and economic abuse) referring to one act or a series of acts in the definition of 'violence against women and their children.'

Box 26: Sexual harassment law in the Philippines

Quezon City amended its Gender and Development Code in 2016 with provisions penalising sexual harassment and sexual violence against women in public spaces to supplement the Anti-Sexual Harassment Act of 1995.¹⁷⁶ This is the first city ordinance in the Philippines to penalise street-level harassment of women. The law included increased sanctions for a range of sexual harassment, classifying acts of harassment as light, moderate or severe offences. Light acts

¹⁷⁶ The Local Government of Quezon City website. "QC Law Penalizing Harassment of Women Signed" <<http://quezoncity.gov.ph/index.php/recent-news/2029-qc-law-penalizing-harassment-of-women-signed>>

include cursing, catcalling, repeatedly asking the subject for a date or her contact number, or taunting a woman with constant talk about sex, which tend to ridicule, humiliate or embarrass the woman. Moderate acts include stalking, making offensive mouth, hand or body gestures with the intention of demeaning or threatening a woman. Severe acts include unnecessary touching, pinching or brushing against the subject's body; public masturbation or lascivious exhibition directed at a woman; and inserting any object into the genitalia, anus or mouth of any person, whether of the same or of the opposite sex. Female victims may file a complaint at the women's desks in police precincts or call a hotline.

Encompassing a broad range of actors

In terms of ensuring proper victim identification, a good practice is to define domestic relationships as expansively as possible to include current or former spouses or partners, whether or not there is or has been cohabitation, partners of the same sex, individuals with family relationships with one another, and members of the same household. In the Philippines the Anti-Violence Against Women and Their Children Act of 2004 provides for a broad relationship and refers to a woman who is the wife or former wife of the perpetrator, or a woman with whom the perpetrator has or had a sexual or dating relationship, or with whom he has a common child, or her child whether legitimate or illegitimate, within or without the family abode.

Including the use of new technologies to commit violence against women

In Malaysia, the Domestic Violence Act of 1994 was amended in 2011 and now a set of new amendments were tabled in early 2017 which includes a suggestion to add threatening the victim with intent to cause the victim to fear for her safety or the safety of her property, and communicating with the victim, or communicating about the victim to a third person, with intent to insult the modesty of the victim through any means, electronic or otherwise.



Good practice : legal definitions that avoid myths and stereotypes

While some argue that good practices in defining sexual violence offences look at how the definitions and required elements of the crime can increase convictions and shift the focus in trials to the behaviour of the defendant and not to the behaviour of the victim, others argue that good practices in reforming sexual violence offences are not based on their proven effectiveness, but in so far as they reflect United Nations and human rights baselines with respect to bodily integrity and what is known about sexual violence.¹⁷⁷

Consent is not implied by lack of resistance - Countering the myth that a rape victim will resist

¹⁷⁷ Liz Kelly, 2005.

Where the crime of rape and other sexual violence is defined as non-consensual sexual contact, meaning consent that is not voluntarily given as the result of the woman's free will assessed in the context of the surrounding circumstances, this counters the myth that when a woman's 'chastity' is threatened, she violently resists, attempts to escape or screams for help. Research shows that the reality is that victims make split-second decisions about how to react to sexual violence in order to survive.¹⁷⁸ The fact that a victim ceased to resist the assault for fear of greater harm or chose not to resist at all does not mean that the victim gave consent. This also counters the concern that forced-based offences translate into high thresholds of evidentiary standards and shift the focus onto the victim's behaviour rather than the accused's actions. Legal definitions of crimes of sexual violence, such as Singapore's Penal Code (sections 375 and 376) move away from requiring the forced-based element to consent-based definition using the phrase "without her consent". While the Penal Code does not contain a definition of consent, section 90 describes the circumstances in which there is no consent, such as consent given under fear of injury or misconception, or by a woman who is unable to give consent due to intoxication or influence of drugs. In the Philippines, the Anti-Violence against Women and Their Children Act (Article 266-D) lists a number of presumptions, including where the victim is so situated as to render her incapable of giving valid consent, which may be accepted as evidence in the prosecution.

Sexual offences are treated equally whether occurring within or outside a sentimental relationship - Myth that husbands cannot rape wives or girlfriends

In Malaysia, amendments to Penal Code, section 375 make forced sexual intercourse with a woman by her spouse a crime.

All forms of intimate partner violence are serious – Myth that emotional abuse is not as serious as physical violence

Psychological violence, while often included in the definition of domestic violence that applies to the civil protection regimes, appears to be more challenging when determining when it meets the criminal threshold. In Malaysia, the Domestic Violence Act of 1994 was amended in 2011 to include a specific offence of psychological abuse. In the Philippines, the Anti-Violence against Women and Their Children Act criminalises conduct that alarms or causes substantial emotional or psychological distress to the women, including such acts as stalking or following the woman or her child in public or private places; peering in the window or lingering outside the residence of the woman or her child; entering or remaining in the dwelling or on the property of the woman or her child against her/his will; destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and engaging in any form of harassment or violence. It also includes causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman's children.

178 Research is reviewed in United Nations Office on Drugs and Crime. "Handbook on Effective Prosecution Response to Violence against Women and Girls". 2014. <http://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf>



Good practice : violence against women classified as public offences

In Indonesia, the draft 'Elimination of Sexual Violence' Bill would categorise sexual violence as a criminal offence rather than a crime against misconduct. It would view sexual violence as a violation of human rights, a crime against the dignity of humanity and a form of layered discrimination.

1.2 Encourage women to report

A fundamental step in the early detection and prevention of continued gender-based violence is to develop strategies that respond to why there is chronic underreporting. Good practices are those that address the lack of awareness by women about their legal rights and available judicial processes and focus on increasing her confidence in the police and criminal justice system to encourage reporting.

Box 27: Updated Model Strategies and Practical Measures

Article 22 urges Member States to:

- ❖ Develop awareness campaigns to inform about the criminal justice system and VAW as a crime
- ❖ Encourage reporting
- ❖ Promote partnerships with the police and private and public entities



Good practice : empower women through legal literacy and outreach

Women need to have the information to be empowered to exercise their rights. This includes having access to a broad range of information, which at a minimum includes a clear description of justice processes in various languages and formats to meet the needs of different groups of women; the roles and responsibilities of relevant criminal justice actors; relevant information on rights and remedies; information on how and where to access legal assistance and advice; and information about the types of available support services and service providers and how to access them; and available protection measures.¹⁷⁹



[T]he whole philosophy of empowerment, when we feel that we will talk with the client about what it is to go to court and then we would like them to feel empowered enough to go there and do it on her own because that is the philosophy of our work here.

Singapore NGO.



179 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015. <<http://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence>>

Legal literacy in plain language available in various formats

In Malaysia the NGO Women's Centre for Change (WCC) has pamphlets and web-based information (www.wccpenag.org) in various local languages that are aimed at women who already in some way identified themselves as experiencing violence. The materials cover topics such as what is the type of violence (domestic, rape, sexual harassment), and what legal processes the victim can use in seeking protection and justice. For women who proceed through the criminal justice process, there is also a video cartoon called 'Going to court'. This material also aims at dispelling any myths and erroneous preconceptions surrounding violence against women and the justice process which may be held by the general public and women survivors, containing a section on myths versus reality. Legal literacy material should also be accessible to all women, including those who are illiterate, visually impaired, or do not hold citizen or resident status.¹⁸⁰ In Singapore, some helplines consider providing basic legal information in a number of languages, in addition to basic counselling. In Viet Nam, members of the women's union work with the police as part of a pilot domestic violence rapid response team in Ben Tre District to disseminate laws on domestic violence, anti-trafficking and other kinds of gender-based violence. As one UN officer noted, *'They organise some communication events, like they perform theatre, even compose songs related to the issues and have talks with local villagers in their village meetings.'*



[O]ur hotline and services have fairly unique resources as compared to any of the other ones in Singapore as we are women-centred and sort of feminist. So not that we think specifically that other Sharia law advisers lack anything, but we have something unique that you would not find in other services. There are a couple of helplines for women but this is our unique group and we are more feminist and women-centred.

NGO staff members Singapore.



Awareness campaigns that focus on legal rights and where to report

In Viet Nam, an awareness programme - a ten-part soap opera television show - focuses on the message that domestic violence is not simply an inevitable part of being a woman, but a crime and should not be acceptable in society. The programme contains a message of empowerment and gives women concrete alternatives as to what to do when violence occurs and how to navigate the police officer and justice system. An important aspect of this good practice is that the Ministry responsible for the police officer were partners in this public awareness campaign.

¹⁸⁰ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015. <<http://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence>>



Good practice : increasing opportunities for women to report

Some countries in Southeast Asia have developed a number of different ways to make reporting easier for victims of gender-based violence, including creating police helplines, websites and better linkages between the police and health and social services. An innovative approach that is highlighted here is the development of a phone application in Indonesia by the Ministry of Women. There is the mobile app that people will be able to download from iStore or Playstore. When the app is opened, the person can request the type of services that they are looking for from this list: the police officer, NGOs Unit Layanan, health service, legal service, spiritual counsellor (Muslim Imam) and social worker. If there is an emergency SOS, then the person can click on a Panic Button and the staff at the call centre at the Ministry of Women will call them back. The plan is to have a map which will show where all the available services around the individual are, such as police stations, legal aid centre, hospital, spiritual, courts, etc. If the violence is happening at the time, the victim can take pictures and record through the app and it would be automatically sent to the system.

Box 28: Field visit to Indonesia

During the field visit, researchers described the service room as being high-tech where there is a wall-screen and on which technicians can display both the app and detailed data on violence against women in the country. There is also a hotline that women can call, and a dozen computers on which technicians are working. The technicians explained that there are five main channels for reporting violence against women: (1) to the staff at the Ministry; (2) to the community level; (3) to the mobile app; (4) to the call centre; and (5) the community line. The hotline is handled by three persons who are staff at the Ministry. When someone call the hotline, they mention where the case happened and the person who answers would refer the victim to the staff available in the nearest location: the police officer, lawyers, hospitals and any appropriate institution which could take care of the case. If the case involves injury, this should report to the police officer. The staff at the hotline centre has a list of the phone number of the police station in each province. The victim or her friends can call the centre and it would immediately create an input into the system. The shift of people working on the hotline is from 7 am to 3 pm, and from 15 pm to 10 pm. At the present, no one is available to respond to the hotline at night, but this will be changed in the future. The planned date of completion is the end of 2017.

Box 29: Using technology to expand women's knowledge and options for reporting¹⁸¹

In Cambodia, the Asia Foundation decided to provide funds to three different

¹⁸¹ Salva, A. "Domestic Violence in Cambodia The country struggles with high rates of gender violence. Activists are turning to technology to help" *The Diplomat*. April 15, 2016. <<https://thediplomat.com/2016/04/domestic-violence-in-cambodia/>>; Paviour, B. "Expensive NGO Phone Apps Gather Digital Dust" *The Cambodian Daily*, February 25, 2016. <https://www.cambodiadaily.com/news/expensive-ngo-phone-apps-gather-digital-dust-108937/>

NGOs in 2015 to find mobile solutions as part of the efforts to respond to violence against women. This was informed by the research from the Asia Foundation, according to which 94 percent of Cambodians now own a mobile phone,

including 39 percent with a smartphone. The Cambodian Young Women Empowerment Network created an app called 'Krousar Kounrou' (Khmer for 'family model') which consisted of five short videos that explained the causes and risk factors of domestic violence and provides organisations which victims can contact. Another group developed an app, '7plus' which offers games with explanations of human rights, filling the gaps many women have on the topic. ActionAid has also designed the Safe Agent 008 app to improve safety in public places, with a present message and GPS location to contact relatives or friends or file anonymous reports if harassed.

Six months later, each app had been downloaded just under 400 times, according to Asia Foundation. With the end of the donor funding it is unclear what will happen with these apps. To get in touch with its target population, the Asia Foundation borrowed the process and vocabulary of Apple and Google, which use so-called 'human-centred design' to prototype products by vetting them with the demographic they hope will ultimately use them. The foundation entrusted the 'ideation' of the apps to several young activists, who conducted workshops with colleagues and clients to define and refine their ideas. While the NGO designers reached out to their target population for ideas for messaging, there was less focus on researching their mobile phone behaviour (e.g. women living in rural areas did not have access to Plat Store or have Gmail).⁷



Good practice : criminal justice agency dealing with the media

In an effort to reduce the inappropriate portrayal of women by criminal justice agencies in the media, in Malaysia the Women Centre for Change conducted a study on how the police and courts portrayed women in the media, and how negative media reporting can have a chilling effect on other women who are thinking of reporting incidents of violence. In the Philippines, the 'Magna Carta of Women' calls on the State to work closely with media-related organisations and stakeholders across the industry to ensure that suitable media content protections are maintained. Ensuring that communications from criminal justice agencies do not contribute to inappropriate media portrayal of women, each agency should develop communication strategies on how they respond to media, such as ensuring communications do not reinforce gender stereotypes. Criminal justice agencies should consider developing proactive press strategies, to have press officers to develop media strategies that promote positive images of victim, raise awareness of the role of the criminal justice system, and information to encourage reporting of VAW incidents.¹⁸²

¹⁸² UNODC *Blueprint for Action*. 2014

Box 30: Portraying survivors as victims in the media¹⁸³

An expert recommended showing other aspects of the domestic violence victim in the media rather than an image of a woman covered in bruises. She explained that on the contrary women who receive beatings have to be strong, mentally and physically, something that female boxers know well. Receiving a hit forces the woman to be prepared to receive it without too much damage, to be resistant, or even to fight back, which should be shown more often in the media.



Good practice : linking traditional justice mechanisms with the criminal justice systems

In a number of countries in Southeast Asia, there are plural justice systems which represent the community-based groups of elders or quasi-judicial traditional leaders who may serve quasi-legal functions in making decision regarding community problems include violence against women. For some states that have hybrid legal systems such as Indonesia, the legislation makes clear that crimes do not fall under the jurisdiction of religious courts. The traditional leaders might be the first 'door' to which a victim turns to, and this may put them in the position of gatekeepers whether or not the incident of violence goes to the criminal justice system.¹⁸⁴ They also have great importance in the community as a whole and can influence how the community views violence against women. For women, traditional mechanisms have advantages and disadvantages. On one hand, they may be more easily accessible, both geographically and economically and speedier forums of dispute resolution and decisions may enjoy greater social legitimacy in local communities.¹⁸⁵ On the other hand, while their nature varies considerably from place to place, traditional mechanisms might reinforce traditional gender roles and ignore the voices and rights of women. Good practices in moving toward a gender-responsive justice system cannot ignore the need to work with traditional justice leaders and informal justice systems.

Strengthen the link and exchange between traditional justice mechanisms and the formal criminal justice system

This is important to ensure that victims of gender-based violence have options when accessing justice and seeking protection. For example, in Viet Nam, the Ministry of Justice is working on developing guidelines that are, in part, aimed at providing clear guidance to first responders such as residential cluster leaders, People's Committees, and Women's Union representatives who are part of the grassroots reconciliation committees, on how to take a report of violence and refer the complainant to the appropriate authorities, the police. The onus of ensuring that the police are informed is placed on the state authorities rather than on the woman victim. In Thailand, in Mae Sot and Burmese refugee camps; it is common for mediation teams comprised of community leaders to screen sexual violence

¹⁸³ See <https://www.arteradio.com/son/61659226/les_combattantes>

¹⁸⁴ OSCE. 2009.






¹⁸⁵ UNDP, UNICEF and UN Women. "Informal Justice Systems: Charting a Course for Human Rights-Based Engagement". 2013. < <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2013/1/informal-justice-systems-charting-a-course-for-human-rights-based-engagement.pdf?la=en&vs=5500>>

cases before referring cases to the criminal justice system. Having civil society organisations, such as the Karen Women Organization and the Muslim Women Organization within the camps who become involved as mediators in the mediation process in sexual violence cases, is important to ensure link between traditional and formal justice. They are trained to support the victims.

Setting out clear duties and functions of community-based leaders

In the Philippines, the Anti-Violence against Women and Their Children Act covers ‘Duties and Functions of Barangay Officials’. The section sets out clear steps for the Barangay officials in handling VAWC cases at the Barangay level and explicitly specifies that Barangay officials are not to attempt to influence the victim to abandon her claims and that all forms of amicable settlement under the Katarungang Pambarangay such as mediation, settlement, conciliation and arbitration do not apply to cases of violence against women under the Act. This includes immediately verifying the report of violence and if necessary seeking the assistance of the police, immediately responding to calls for help by entering the dwelling and ensuring the victim’s safety, informing the victim of her rights and recording and preserving her testimony with her consent and ensuring her privacy. A Barangay official also has the power to arrest the perpetrator without a warrant under certain circumstances. They also assist the victim in terms of health care and shelter where needed as well as are obliged to report the incident to the Local Social Welfare and Development Office and to the Women and Children’s Protection Desk at the nearest police station. They also monitor compliance of Barangay protection orders. Any Barangay official or law enforcer who fails to report the incident of violence against women to the Philippine National Police shall be liable to a fine not exceeding ten thousand pesos (P10,000.00) or whenever applicable, criminal, civil or administrative liability.

Box 31: Philippines example

Duties and Functions of Barangay Officials	
 <p>Undertake education programmes</p>	 <p>Peer counselling for men</p>
 <p>Develop a family violence prevention programme</p>	 <p>Develop a system to document and report VAWC cases and involve women in any planning and implementation</p>
 <p>Designate an anti-VAW desk officer who coordinates a one stop help desk</p>	

1.3 Early detection strategies

Early detection includes ensuring frontline criminal justice providers are able to identify and deal with victims of violence against women.¹⁸⁶ This is done by creating close ties to the community, including women's organisations and community groups working on behalf of violence against women, through joint trainings, joint patrolling and referral services.¹⁸⁷



Good practice : education for individuals who have contact with victims to improve their ability to recognise violence against women

In some countries, such as Viet Nam and Lao PDR, certain individuals are uniquely placed to identify actual or potential survivors of violence and are important partners in any crime prevention and early detection programme. They include heads of residential clusters, People's Committee and Women's Unions who have received training in skills in recognising signs of abuse and different manifestations of violence against women. In Indonesia, civil police and village leaders attended capacity-building workshops on skills and knowledge to provide for women safety audits. The purpose of safety audits is to assist in designing gender-sensitive urban infrastructure and develop urban safety guidelines. Such audits are to inform the development of safety planning, environmental design and management of public space in order to reduce the risk of violence against women. This includes increasing the awareness of criminal justice agencies of initiatives to tackle crime and anti-social behaviour on public transport and in other public spaces and develop partnerships with civil society groups which are engaged in these initiatives.¹⁸⁸

2. Initial contact and reporting

While the police may or may not be the first point of contact and of disclosure of violence for victims, the police officer is the first point of contact within the criminal justice system. As the frontline receivers of criminal cases, the police officer has an immediate and determinant impact on victims and cases involving violence against women. They are responsible for responding to reports of violence, ensuring protection for victims, conducting investigations, collecting evidence and dealing with victims. The nature of their interactions has a great impact on whether the criminal justice system will work effectively for the victims. Good practices are those that appreciate how critical the first contact with the criminal justice system is for the victim and how this impacts on her willingness to be further involved, and on the development of a case.

Box 32: Updated Model Strategies and Practical Measures

Article 15 urges Member States to:

Provide the police officer and other law enforcement agencies, with judicial authorisation where required, with adequate powers to enter premises and make an arrest in cases of VAW and to take immediate measures to ensure the safety of the victim

¹⁸⁶ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

¹⁸⁷ Denham, Tara. "Police Reform and Gender" DCAF. 2008.

¹⁸⁸ UNODC Blueprint for Action. 2014.

Article 16

Promote specialised police units or personnel

To respond promptly to incidents of VAW, including by drawing on a rapid court order, where appropriate

Be able to provide victims, where possible, with the right to speak to a female justice provider

2.1 Initial reception and receiving the reports



Good practice : increasing opportunities to report to the police

There is broad agreement that police stations are not the best places to address violence against women, especially sexual violence, and certainly not to collect forensic evidence.¹⁸⁹

Victims are able to report to the police outside the police station

A number of Southeast Asian countries have established One Stop Crisis Centres, Victim Support Centres or Integrated Service Centres which have links to the police, where requested. These are places where the victim can go outside the traditional police station, often located at hospitals or community-based centres close to hospitals, where examinations and initial support can be undertaken. These Centres also usually have available female examiners and sometimes trained police officers. They usually involve advocates or women's NGOs throughout the initial reception and reporting and provide proactive follow-up. The first One Stop Crisis Centre in the region was established in Malaysia in 1996. Since then a number of countries in the region have introduced such centres (e.g. Thailand), often following the model established in Malaysia. Indonesia has established integrated Service Centres in hospitals and victim's services in the Community Health Centres (Pukesmas) Circular (No. 659 of 2007).¹⁹⁰ Singapore has Victim Support Centres. In response to the challenges caused by the fact that these Centres are often unevenly located throughout the country, mobile units have been established (e.g. in Thailand) or virtual One Stop Crisis Centres have been set up that rely on extensive referral systems.

Box 33: Effective elements of One Stop Centres¹⁹¹

A review of the different types of one stop centre models in Southeast Asia identifies a number of elements to assist victims in reporting to the police:

- ❖ Address multiple needs of the victim: the centres usually have a broad

¹⁸⁹ Kelly, L. 2005.

¹⁹⁰ Due Diligence Regional Report.

¹⁹¹ The elements are gleaned from a number of sources, including UN Women. Virtual Knowledge Centre on Ending Violence against Women and Girls website. <<http://www.endvawnow.org/>>

mandate to attend to the medical, emotional, social and medico-legal needs of the woman in a prompt, professional and compassionate manner.

- ❖ **In one location:** the centres are meant to provide comprehensive care in one location, they are designed to reduce the number of institutions a victim must visit, and they seek to coordinate the assistance process in one institution.
- ❖ **Reduce the stress for victims:** practice has shown that victims who receive immediate care and counselling recover more steadily and are less likely to need long-term care.
- ❖ **Availability of female practitioners and police officers:** brings victims into contact with providers who have expertise in responding to violence against women, and knowledge of how to treat victims with dignity and respect.
- ❖ **More effective work by law enforcement structures:** One Stop Centres have access to the victim for the purpose of evidence gathering, allowing the victim herself to be in a safe and supportive environment, making it more likely she will co-operate with the justice system. From the perspective of law enforcement, the centres assist the police officer by providing a centralised facility where they can meet with the victim and gather evidence.
- ❖ **Partnerships with women's organisations:** a recent evaluation of a one stop centre for sexual violence in the United Kingdom found that advocacy and proactive follow-up were more relevant services than counselling in the immediate aftermath of sexual violence.¹⁹²
- ❖ **Foundation of a feminist perspective:** a feminist perspective emphasises the principles of choice, respect and empowerment. In line with this, any of the services should be provided regardless of whether a report will be made to the police. Given that the services should not be contingent on the initiation of a criminal case, an aspect of a good practice is to offer the possibility of taking samples, and having them stored for a period of time, so that the decision about reporting can be taken at a later date.



Good practice : ensure a supportive environment for initial reception at the police station

Creating supportive environments that encourage women to claim their rights and report crimes committed against them is seen as a good practice.¹⁹³ This means establishing a protective, supportive and non-bureaucratic atmosphere where the victim can report to the police officer at the police station and where their safety, privacy and dignity can be guaranteed.

¹⁹² Lovett, J., Regan, L. and Kelly, L. "Sexual Assault Referral Centres developing good practices and maximizing potential" *Child and Women Abuse Studies Unit London Metropolitan University*. 2004. <<http://library.college.police.uk/docs/hors/hors285.pdf>>

¹⁹³ UN Committee on the Elimination of Discrimination against Women (CEDAW). "CEDAW General Recommendation No. 33: Women's Access to Justice" 2015.

Victim-friendly premises

The aim of the design of the physical space where victims are received and assisted should provide the victims the feeling that particular attention and respect is being paid to their special situation, to build trust and overcome any reluctance to report or make a statement. Victim protection rooms in the police stations have been established in Malaysia where Victim Centres at certain police headquarters ensure victim-friendly spaces in which the victim can give her statement to the police. In Indonesia, the police officer has established the special crisis centres known as 'ruang pelayanan khusus' (RPK or special service units). These police-based crisis centres are staffed by female police officers who do not wear police uniforms. An MOU has been prepared between the police and existing local NGOs, consisting of psychologists, psychiatrists, lawyers and social workers.¹⁹⁴ In Singapore, the initiative OneSafe centre at the Serious Sexual Crimes Branch provides a place where victims of rape can simultaneously make a report and undergo forensic examination. The Serious Sexual Crimes Branch established such a centre in January 2017; however, at the moment its opening hours are very limited and it is available only for rape cases in which the assault happened in the preceding 72 hours.¹⁹⁵ There is also a special room for interviewing the victims at the Serious Sexual Crimes Unit.



OneSafe tries to reduce the back and forth for the survivor, who before would have to make a police report before being able to get a forensic examination. [OneSafe] brought hospitals to the police station. But it is a very small group of people that are able to help, only a particular time in the day, not 24/7, and only for “hot” cases. ... Given the fact that most survivors of sexual assault report the case after 72 hours, we don't know how many of them benefited from this program. I don't think of OneSafe as a place to go through for help when you have faced sexual assault. It is more like if you want to make a report, you can see the doctor there so it is easier to make a report. It does not have that overall place of being for help and support and to meet whatever need you may have. ... But it is intended to reduce the burden of police report agent.

Singapore NGO staff



Good practice : gender-sensitive police officers are available

The emphasis on the treatment of victims is reflected in the UN Essential Services Package, requiring the police officer to treat and communicate with victims in a way that promotes their dignity and respect. The police officer should be trained in dealing with victims in a non-judgmental, empathetic and supportive manner. A victim who feels that her report of violence is taken seriously, her complaint is

¹⁹⁴ "The establishment of Special Service Unit (RPK) Police Women Desks in Indonesia. <http://www.aic.gov.au/media_library/conferences/2005-policewomen/harsono_slides.pdf>

¹⁹⁵ Electronic survey response from Singapore.

regarded as credible and valid unless the contrary is clearly indicated and that she is treated as deserving of the best response possible, has a better chance at having her story accurately recorded and at having a positive experience with the criminal justice system. Victims who are supported and treated in a respectful and compassionate manner are not only less likely to withdraw support from the criminal process, but also more likely to feel able to tell what they know in a clear and coherent manner.

Gender-sensitive trained frontline police officers

All police officers in the police force might meet victims of gender-based violence, even if dedicated or specialised units or desks exist. For this reason, it is important that all police should be trained to be non-judgmental, empathetic and supportive in order to proceed in a manner that considers and prevents secondary victimisation.¹⁹⁶ In the Philippines, the Magna Carta of Women requires that all government personnel involved in the protection and defence of women against gender-based violence receive mandatory training in human rights and gender sensitivity (section 9).

Availability of female police officers

Recognising that women feel more comfortable reporting to other women, the Updated Model Strategies urge states to provide the rights to speak to a female justice provider. In the Philippines, section 9 of the Magna Carta of Women provides for increasing women police officers. It mandates the police force to open up opportunities for women to serve as police officers, as well as to deal with the increasing numbers of domestic violence cases being reported. In Thailand, Criminal Procedure Code section 133 provides that 'In the examination of a female injured person in case of the offence relating to sexuality, it shall be conducted by a female inquiry official except such injured person gives consent, or there is any other necessary grounds, and the given consent and necessary grounds shall be noted down. In this regard, the injured person may request for the attendance of any person in the examination.' In Brunei Darussalam, the Women and Child Abuse Investigation Unit of the Royal Brunei Police Force or Domestic Violence Unit is an all-female special unit within the police department to investigate domestic violence complaints.¹⁹⁷



Finally, the long-awaited call came. My case had been referred to the [Singapore] Serious Sexual Crime Branch at the Cantonment Police Complex. I was relieved to find out that my new Investigation Officer (IO) was a female, whom I addressed as Ms Sarah. (...). **In actual fact, I was uncomfortable with the male IO and was under a lot of stress at that time. I did not want to share anything with him and my mind must have blocked these painful details.**

Victim's statement from the book 'Even in Silence'.¹⁹⁸



¹⁹⁶ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

¹⁹⁷ Yusree Junaidi, M. and Sharbawi, Z. "The Protection of Victims, Particularly Women and Children, against Domestic Violence, Sexual Offences and Human Trafficking – the Brunei Experience". Attorney General's Chambers, Brunei Darussalam. Date unknown.

¹⁹⁸ Ateera, D. "Even in Silence: My Journey of Sexual Abuse and Recovery". 2015. p 70.

Box 34: Female police officers

Research has found that the vast majority of female victims prefer female police officers. One study showed that around half (52%) would prefer a female police officer for the first response, and two-thirds (65%) a female officer for the taking of the statement.¹⁹⁹ If complainants feel more at ease, they are more likely to give a clearer account and facilitate evidence gathering. In Thailand, research conducted by ICJ found that almost all interviewees underlined the need for the number of women in key professions, and particularly law enforcement, to be increased. Indeed, although the Criminal Procedure Code provides that women who have faced sexual violence should be interviewed by female police investigators, in August 2011 only 144 of the 6,542 investigators were women.²⁰⁰ This very small number makes it difficult in practice to ensure compliance with the legislation. Female police officers still require adequate training, as it cannot be assumed ‘that any woman will do’.²⁰¹ In Viet Nam, in a recent Women’s Justice Perception Survey, a majority of women surveyed in the community prioritised having a ‘trained gender-sensitive police officer’ over a ‘female police officer’.²⁰²



[D]espite the willingness of the women, sometimes I have noticed that women might feel shy to talk about issues. Thus, talking with female police officer, to some extent, could ensure the quality of the data. In addition, sometimes my male colleague does not feel some words are not serious, but the victims feel painful and trembling because it is not sex by consent. **My male might ask why don't you resist. Yet, c'mon there are many situations in which women cannot even resist or afraid to resist. I always talk to the police officer in charge. Some officers are not sensitive. Some officers tease those victims. I have to warn them. I told them that it is not rightful to rape anyone even though they are sex workers or naked. No is no.**

Thailand female police officer.



Good practice : dedicated police units or specialised desks

The designation of dedicated police officers or the establishment of specialised desks or police units is

¹⁹⁹ From Lovett et al. (2004) and Kelly et al. (2005)

²⁰⁰ Statistics, Office of Royal Thai Police. 2011.

²⁰¹ Jordan, 2002, as cited in Kelly, L. 2005.

²⁰² Skinnider, E. Forthcoming.

specifically mentioned as a good practice in the Updated Model Strategies and by the CEDAW Committee.²⁰³ Given the importance of the first contact by the criminal justice system and the traditionally bad experiences women have had in dealing with the police, the creation or strengthening of well-funded specialised police units that are trained and equipped to respond to all forms of violence against women have been found to be effective in a number of states. A number of Southeast Asian countries have established specialist desks or units within the police force. Police units generally are made up of specially trained police officers and often have a percentage of female police officers. Units are generally guided by Standard Operating Procedures or policies. In Malaysia, the Royal Malaysian Police Force has established the D11 Sexual Crimes Unit to handle sexual crimes. This specialist section is designed to provide expertise, coupled with supportive attitudes and motivation, to the investigation of sexual crime. The D11 units have had an International Standardisation Organisation (ISO) standard certification since 2007. This means that they have to comply with international standards in their work and in their Standard Operating Procedures (SOPs), and that they are audited annually. In Indonesia there are Women's and Children's Services Units.²⁰⁴ In the Philippines, the Women and Children Protection Centres (WCPC) were created to provide appropriate police services, through an interdisciplinary approach, to women and children who are victims of abuse. The WCPC is mandated to perform the following functions – counter-intelligence and surveillance, investigations, operation, policy and strategy formulation, rescue and victim assistance, preparation of a watchlist, advocacy and public awareness campaigns and maintaining linkages. In Singapore, more serious forms of sexual assaults are handled by the specialist Serious Sexual Crimes Branch. There are also officers trained specifically on sexual crimes at all police headquarters which handle such cases.

Box 35: The Philippines pushing LGBT desks in every police station²⁰⁵

In the Philippines, the House of Representatives committee on public order and safety has approved a measure seeking to establish lesbian, gay, bisexual, and transgender (LGBT) help and protection desks in Philippine National Police (PNP) stations nationwide in order to ensure that victims of hate or sexually oriented crimes will have a place to go for assistance. Under House Bill 2952 the proposed LGBT desks in police stations shall act on all cases involving crimes against chastity or sexual harassment and committed against LGBTs in the country. The bill seeks to amend Title VII of Republic Act 8551, also known as the PNP Reform and Reorganisation Act of 1998, to 'Creation of Women's, Gay, Bisexual and Transgender (LGBT) Desks in All Police Stations and the Formulation of a Gender Sensitivity Program.' The bill also seeks to amend Section 57 of RA 8551 so that 'The PNP shall establish women's and LGBT desks in all police stations throughout the country to administer and attend to cases involving crimes against chastity, sexual harassment, and abuses committed against women, children and LGBT and other similar offenses.' If the bill becomes

²⁰³ UN Committee on the Elimination of Discrimination against Women (CEDAW). "CEDAW General Recommendation No. 33: Women's Access to Justice" 2015. See also the Updated Model Strategies and Practical Measures, Article 16.

²⁰⁴ Police Regulation (No. 10 of 2007) on the Organization and Procedures of Women's and Children's Services Units, cited in the Due Diligence Regional Report.

²⁰⁵ Merueñas, M. "House panel OKs bill putting LGBT help desks in police stations". January 3, 2017. <http://www.gmanetwork.com/news/news/nation/594489/house-panel-oks-bill-putting-lgbt-help-desks-in-police-stations/story/>

law, municipalities and cities presently without policewomen will be given two years upon its entry into force to comply with the requirements of the provision. The bill also seeks to amend Section 58 of RA 8551 so that ‘within the next five years, the PNP shall prioritise the recruitment and training of women who shall serve in the women’s desk.’ Under the proposal, the PNP would have to reserve 10 percent of its annual recruitment, training, and education quota for women.



Good practice : multi-disciplinary police units

Often a common element of specialised police units is having a multidisciplinary team, where the police work with victim support services or psycho-social workers when handling gender-based violence cases and which receive women at first contact. Many victims are unfamiliar with the criminal justice system and can feel intimidated or anxious when dealing with the police and going through the system, some countries have units where the police team up with skilled professionals or women’s organisations to support victims emotionally as well as assist them in accessing other services they might need. In Thailand, the Domestic Violence Victim Protection Act (2007) (section 8) requires the police inquiry officer to have a psychiatrist, psychologist or social worker or a person required by the victim to join the interrogation of the victim in order to give advice.

In Viet Nam, domestic violence rapid response teams composed of the police, members of the women’s union and other volunteers have been piloted in Ben Tre District. As one UN officer noted *‘[W]hen they receive the reports of domestic violence cases that happen in that community they will be the first people to come to that community to help the victims and deal with the perpetrators. In their team, they have a police officer, so the police officer will be in charge of dealing with the perpetrator, and people in social organisations will be in charge of dealing with victims, for example women’s union, help victims go to clinic if something happens with their health, or a justice officer in that community will help her to file a lawsuit or to give advice to her if she wants to do something to protect her human rights so she can be heard in the system.’*



Good practice : specific police protocols / standard operating procedures

In terms of procedural matters, the police should know clearly what steps are required in these cases. Such procedures should be set out in detailed regulations and comprehensive guidelines, they should be mandatory rather than discretionary, and they should involve training and sensitisation amongst all police officers. A number of Southeast Asian countries, particularly those with specialised units, have specific protocols and standard operating procedures (SOPs). However, these are considered internal, and therefore none were shared with the research team. These protocols and SOPs provide greater detail as to how to implement the national criminal procedure laws. A review of those laws provided indications of some of the good practices likely to be included in protocols and SOPs.

No need to confront the accused

In Thailand, the Criminal Procedure Code has been revised in a manner designed to take

account of the particular needs of women survivors of violence, for example through the introduction of provisions specifying that survivors should not be required to confront the alleged perpetrator.²⁰⁶

Confidentiality is respected

In Thailand, the domestic violence law provides that the name of the complainant shall not be published or made known to the public in any manner whatsoever in relation to picture, story or any information which may cause damage to the perpetrator of the domestic violence or to the victim.

Connecting victim with victim support and assistance

Recognising how important it is for women to feel supported during the reporting period, the police should be required to inform victims of the availability of victim services and support and make this available to them. Police stations might have updated lists of public and private organisations and welfare services for victims, as well as the addresses and telephone numbers of those services. The police should encourage the victims to contact the victim services and support agencies. An example is a 2010 booklet produced by the Singapore Police Force that contains such details about victim support services in the community.

Appreciating how to deal with reluctant victims

The police need to understand why victims often refuse to participate and consider approaches to persuading victims to work with them without threatening them. Such practices need to emphasise that it is the victim's choice to cooperate with the criminal justice system and that lack of cooperation on her part does not relieve the criminal justice system of its responsibility for investigating and prosecuting the case. Practices that acknowledge the lack of cooperation of the victim while ensuring for her safety and dignity are considered good.

Procedures in place to identify high risk cases

As first responders, the police have a key and important leadership role in managing issues associated with keeping victims safe. The police assume a critical responsibility in identifying high risk cases and initiating the flow of information and communication among response agencies.

Box 36: The Philippine example of duties and functions of the Philippine National Police - Women and Children Protection Desks (PNPWCPD) under the Anti-Violence against Women and their Children Act, Section 48

²⁰⁶ *International Commission of Jurists. 2012.*

The Women and Children Protection Desks shall have the following duties and functions:



Upon the receipt of a complaint, conduct an appropriate investigation, including taking the formal statement of the victim and collecting all other necessary evidence.



Immediately after taking the essential elements of information, refer the victim to the nearest facility for appropriate medico-legal examination with a female examiner, especially in sexual violence cases.



Only persons expressly authorised by the victim shall be allowed inside a room where the police investigation as well as the medical/ physical examination are being conducted in private.



Ensure the confidentiality of the identity of the victim and of all other parties directly involved with the case; this applies in particular to the media.



Refer the victim to a social worker, shelters, NGOs and other service providers for psychosocial intervention and other rehabilitation programmes.



Then forward a report to the prosecutor for filing of appropriate criminal action under the Act.



If the victim has manifestations of the Battered Woman Syndrome, inform the Barangay, the local social worker, or concerned NGOs, local professional groups or civic groups for appropriate psychiatric and psychological evaluation.



Assist in the application and enforcement of a protection order that may be issued by the Barangay or the court.



Respond to a call for emergency assistance to ensure immediate protection of the victim by entering the dwelling if necessary, whether or not a protection order has been issued.

The Women and Children Protection Desks shall have the following duties and functions:



In a case where the perpetrator was armed or in possession of a deadly weapon in plain view, have it confiscated.



Effect the arrest of the perpetrator by virtue of a warrant issued by the court or in situations where the act has been committed, is being committed or about to be committed, they can arrest the perpetrator even without a warrant.



Where the victim is deemed more secure staying in her place of residence, get a protection order to remove the perpetrator. In other situations, provide assistance to help facilitate the transfer of the victim to a safe place of her own choice, including the removal of some of the victim's personal belongings.



Monitor and follow up any case, including doing a periodic assessment report of all cases reported.



Participate in multidisciplinary mechanisms to help address the protection needs of the victim.



Good practice : laws or policies mandating treating victims in a caring manner

In Lao PDR, the Violence against Women and Children Act includes in its legislation (Article 31) the rights of victims of violence, including the right to be respected and treated in a caring, sensitive and friendly manner and to have their information kept confidential.

Box 37: Recommendations on how to communicate with victims in a manner that is respectful and promotes her dignity²⁰⁷

Communications with the victim by criminal justice providers should:



Be non-judgmental, empathetic and supportive.

207 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

Communications with the victim by criminal justice providers should:



Validate what has happened to the victim throughout the process.



Give the sense to the victim that her report is taken seriously, and that she deserves the best response possible.



Be respectful, do not contribute to secondary victimisation.



Provide an opportunity to express her story, be listened to and have her story accurately recorded.



Ensure communicators use plain language that is patiently explained.



Be ongoing, (e.g. ensuring regular communication is maintained with the victim throughout the justice process), keeping in mind the risk of re-occurrence of violence, which should define the type and amount of communication required.



Good practice : responsiveness in handling complaints

The ability to respond urgently to calls and in a specific manner can greatly reduce the risk of further harm to the victim.²⁰⁸ The international standards urge the adoption of policies and practice that allow the police to respond promptly to incidents of violence against women.²⁰⁹ The Essential Services sees at a minimum that states should ensure that immediate action is instituted when a victim reports an incident of violence against her.²¹⁰ The timeliness of the victim's report should not impact or lessen the severity of the incident and should not delay the police response.²¹¹

²⁰⁸ *208 Due Diligence Regional Report.*

²⁰⁹ *209 Updated Model Strategies and Practical Measures, Article 16.*

²¹⁰ *210 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.*

²¹¹ *211 UNODC Blueprint for Action. 2014.*

Prioritising calls involving violence against women

Quick response by the police can diffuse life-threatening situations, mean a timely presence at the scene of violence and ensure gathering of evidence. In Lao PDR, the Law on Preventing and Combating Violence against Women and Children requires that the police who received the report or notification about the incident of violence against women must immediately intervene to stop the violence and assist the victim, ask, interview, collect data and assess the situation of the victim (Article 30).

Document all calls

Ensure all calls are documented and that complaints are registered, whether or not they are determined to be a crime. All information obtained and all reports made are kept confidential and are stored in a secure location.²¹² In Cambodia, the Law on the Prevention of Domestic Violence and the Protection of Victims requires the authorities to make a clear record about the incident and report it immediately to the prosecutor in charge. This ensures that the receiving officer takes full account of the claims and never trivialises reports of domestic violence.

Power to enter premises

Some domestic violence laws in Southeast Asian countries have specifically addressed the concern that some police might still be reluctant to enter the 'sanctity of the home' in order to intervene in what they might believe is a 'private matter' or when one resident clearly wishes it, but another does not, while balancing the prevention of unjustified or arbitrary rights of entry by the police. For example, in Cambodia, the Law on the Prevention of Domestic Violence and the Protection of Victims provides that if there is a request for intervention and the occurrence of *flagrante delicto* (i.e. the perpetrator has been apprehended in the act), the authorities in charge have the right to have access to the scene, despite a lack of a warrant authorised by the court (Article 15). This includes cases where the police have reasonable grounds to believe that domestic violence has occurred during the past period of 48 hours or could occur during the upcoming period of 24 hours. In Thailand, the Domestic Violence Victim Protection Act provides that the police have the power to enter into the dwelling or place where they know or have been informed that domestic violence has happened so as to interrogate the person who is alleged to have committed domestic violence, the victim of the domestic violence, or any other person, to provide the victim of domestic violence with treatment by a physician and to have a consultation with psychiatrist, psychologist or social worker (section 6).

Power to conduct arrests

The safety of the victim depends not only upon the police being able to gain entry, but also on police awareness of the potential gravity of the situation, the motivation to intervene and the conduct of the police once they gain entry.²¹³ In Cambodia, the Law on the Prevention of Domestic Violence and the Protection of Victims provides the police the authority to arrest the perpetrator who is in the act of committing domestic violence or violating a court protection order, without the need to obtain a warrant. In the Philippines, according to section 30 of the

212 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

213 International Centre for Criminal Law Reform and Criminal Justice Policy. 1999.

Anti-Violence against Women and Their Children Act, law enforcers are to respond immediately to a call for help or request for assistance or protection of the victim and arrest the suspected perpetrator without a warrant when any of the acts of violence defined by this Act is occurring, or when the law enforcers have personal knowledge that any act of abuse has just been committed, and there is imminent danger to the life or limb of the victim as defined in the Act.



In 2008, after yet another malicious episode, Lin made it a goal to get the PPO she had wanted to get 11 years earlier. Through married and eligible to apply for a PPO, she anticipated challenges. The police officer had demonstrated extraordinary sympathy for her husband, making Lin believe that a kind of “automatic alliance” makes it psychologically difficult for men to arrest abusive husbands. Additionally, police who answer emergency calls are often quite young with relatively limited life experience. **“It would be difficult for a policeman in his 20s,” Lin explains, “to arrest an older man in his home, especially if that man is middle or upper class. I think women police officers would handle domestic violence cases with more sensitivity towards the victim.”** Another problem Lin expected to face was that she could not get a PPO without physical evidence. **“Unless there is blood and bruises, no one believes you are in danger, not the police, and not the society,” she adds. “My husband knew this as well and was always careful about the type of physical abuse he inflicted”.**

*Victim’s story from the book ‘Nightingale Songs’.*²¹⁴



Box 38: Consider the adoption of pro-arrest policies in violence against women cases

The UNODC Blueprint for Action calls on States to consider the adoption of pro-arrest policies in cases of violence against women. Arresting and removing the offender from the premises, rather than issuing warnings or summons to appear later in court, mean the difference in the outcome of a violent dispute.²¹⁵ The power to arrest varies in different jurisdictions. Many countries with a strong legal tradition of individual rights prefer the use of warrants and the issuance of a summons instead of on-the-spot arrests and detention, unless there is some urgency to the situation or the police believe that there is a danger of further breaches of the peace. In some countries, a stronger presumption in favour of arrest in domestic violence situations exists, based on the need for a stronger

²¹⁴ Marshall Cavendish “Nightingale songs. *Survival Stories From Domestic Violence*”. 2011, p. 66.

²¹⁵ UNODC *Blueprint for Action*. 2014.

message to the offender as well as on evidence of ongoing danger to the victim in many cases. These policies have been introduced also to counter traditional reluctance to arrest suspects in domestic violence cases and to ensure that the decision to arrest is not placed on the victim, while at the same time ensuring that the victim is not disempowered.

2.2 Assisting with formal reporting

In a number of Southeast Asian countries, certain forms of gender-based violence are compoundable offences, which means that in such cases an official investigation cannot be initiated unless the victim makes an official complaint. Therefore, encouraging and assisting women in lodging a formal complaint, and in following through on the complaint, is important. Victims who feel protected, assisted and supported are more likely to file reports. In addition to the good practices already mentioned in Section 1, and those that will be mentioned in Section 3 on protection and section 4 on victim assistance and support, only a few good practices are discussed below.

Box 39: Updated Model Strategies and Practical Measures

Article 16

- ❖ Promote specialised police units or specialised personnel
- ❖ Be able to provide victims, where possible, with the right to speak to a female justice provider

Article 18

- ❖ Encourage and assist women in lodging and following through on formal complaints by providing protection and advising them that the responsibility for pursuing charges and prosecuting rests with the police and prosecution



Good practice : the police are trained to assist victims file their reports

Trained police should be available to assist and support the victim in filing her complaint. In Thailand, section 6 of the Domestic Violence Victim Protection Act provides in the case where the domestic violence victim intends to conduct litigation, that person shall be facilitated to file a complaint under the Criminal Procedure Code, except where that person is in a condition that she is unable to file a complaint upon her own or has no opportunity to do so, the competent official may file a complaint on her behalf. In some respects, this could leave open the possibility that officials could pursue investigations and legal proceedings on their own initiative and volition in certain instances. However, the Act does not define the circumstances in which this exception will apply, and the likelihood is that the clause is intended to apply in situations where the victim is physically unable to file a complaint.²¹⁶

²¹⁶ *International Commission of Jurists. 2012.*

Allow a verbal report

It is important to move away from placing the heavy onus on a woman victim of violence to pursue criminal justice. This includes the onus on her to file a written complaint or formal denunciation before the police and prosecutor will commence an investigation. The Lao PDR Law on Preventing and Combating Violence against Women and Children, article 57 provides that filing a petition in cases of violence against women can be made verbally, and not only in writing.

Victims to receive copy of report or written acknowledgement

Victims should receive, upon reporting a crime, a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, time, place and any damage caused by the crime. This acknowledgement should include a file number, date, police station and the name of the official who took the report. The acknowledgement could include a photocopy of her statement if possible. The acknowledgement should be able to serve as evidence that the crime has been reported (for example in relation to compensation claims). The police officer have the contact details of the victims and a practice to provide to the victim updated contact details for communication about the case, unless she has expressed a wish not to receive such information.²¹⁷



Good practice : ensuring confidentiality when reporting

In the Philippines, the Anti-Violence against Women and Their Children Act provides for confidentiality from criminal justice providers when engaging the criminal justice system. Law enforcement officials, prosecution, judges, court personnel and medical practitioners, as well as parties to the case, shall recognise the right to privacy of the victim-survivor of violence. Law enforcement officers and prosecutors shall conduct closed-door investigations and shall not allow the media to have access to any information regarding the victim-survivor. The adult victim, however, may choose to go public or speak with the media, preferably with the assistance of her counsel. The Barangay officials, law enforcers, prosecutors and court personnel shall not disclose the names and personal circumstances of the victim-survivors or complainants or any other information tending to establish their identities to the media or the public or compromise her identity. It is unlawful for any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilising tri-media or information technology to cause publicity of the name or identity of the victim or complainant without her consent.



In Singapore, there have been recent amendments on the gag order. ... In practice, this gag order is an existing practice **but in anything involving a sexual assault victim, the media is generally not allowed to report in any way that would reveal their identities so we have found that although this has not really put to rest fears amongst our clients ... in practice we have never really seen cases where ... they have always been quite responsible when it comes to this.**

Singapore NGO staff.





Good practice : the possibility of filing an anonymous report and third option programmes

Certain practices have been introduced in some countries to expand the options for victims to report to the police while at the same time respecting the challenges they face in engaging the criminal justice process.

The Anonymous Reporting Programme

The Anonymous Reporting Programme is a choice for sexual assault victims who have considered reporting the assault to the police officer, but reluctant to do so. This gives victims the opportunity to provide anonymous information about a sexual assault to a designated community agency, such as Sexual Assault Centres. Without disclosing the victims' name, this information is passed on to the police for general information purposes.

The Third Option Programme

The Third Option Programme offers victims of sexual assault the opportunity to have evidence collected at a hospital emergency department, but to defer the decision about whether or not to report the incident to the police at that time. Rather than being restricted to "Yes, I will report" or "No, I do not want to report," this provides the third option of saying, "Maybe, but I need time to think about it." Forensic evidence is collected, documented, and stored, giving victims the opportunity to turn the evidence over to the police officer at a later date. Regardless of their decision about participating, victims will receive information, support, and/or health care services. In Thailand, a UN staff member was told that victims can undergo forensic examinations without a police report and the evidence will be stored for up to five years. This allows the victim time to decide whether to engage the criminal justice system.

Box 40: Innovative practice introduced to respond to traditional treatment of violence against women cases

In many jurisdictions, violent acts against women were and are often treated as a private matter. This practice differs from the treatment of other crimes, which are considered to be of sufficient concern for the state to initiate prosecution, on behalf of the victim and all of society. In part, this past practice was a response to traditions regarding the rights of male family members and the ownership of women. It also reflected the fact that women, especially in a domestic violence situation, are often reluctant to cooperate if it means seeing their partner prosecuted and jailed. Placing the responsibility to proceed squarely on the police officer and prosecutor is also intended to protect the victim from retaliation by the offender by removing from the victim the apparent choice of laying or dropping criminal charges. It is important where investigations and prosecutions may proceed against victims' wishes, that adequate support

be provided to the victim and that the police officer and prosecutors are well trained in the nature and dynamics of this kind of violence. It should also be recognised, however, that the success of this approach may become highly dependent on the ability of prosecutors to develop separate evidence of the crime, independent of the victim's testimony. It should never be the victim's responsibility to push the case through each phase of the criminal justice system. However, it is important to recognise that the goals of the victim in seeking protection and engaging the police might not mean that she wants to go through the criminal justice system. She may have involved the criminal justice response to stop the violence and to be safe but not to punish her intimate partner. The Updated Model Strategies urge provisions that provide assistance to women victims of violence to include ensuring that they have access to adequate legal representation so that they can make informed decisions regarding legal proceedings and issues relating to family law.



Good practice : gender-sensitive interviews

Gender-sensitive interviews have many different elements, some of which are found in the practices in this region. Having the victim interviewed by a multi-disciplinary team, including the police and psycho-social worker, psychologist, counsellor, or social worker has been part of the current debate in Indonesia related to the draft Sexual Violence Bill. In the Bill the emphasis is on the unique aspects of the violence, the needs of the victim in sexual violence cases and the need for different treatment by the criminal justice system. As mentioned during an interview in Indonesia: *'For instance, for rape victims, we would like the police not to interrogate the victim immediately, without the intervention first of a psychologist, social worker or counsellor etc. The police should check if she is ready, she needs the counsellors or she needs psychological support. Again, if when we reach to the point that we could revise the criminal procedures, we will put the high concern on the rights of women.'* This ensures that the interviewers have an understanding that the victim might not recall all the details immediately after the traumatic event and might need to return to complete her statement. The victim has a right to have a support person during the interview. Notification should be given to others that can provide support to the victim. So for example, Singapore guidelines provide that where extra sensitivities are involved, joint interviews may be conducted, and in trafficking cases, the embassies of the country of origin of trafficked victims will also be notified so that the full range of humanitarian and consular assistance can be accorded to these victims. Victims are to be informed about the possibility of being assisted by a lawyer, where permitted according to domestic legal framework, and have easy access to independent and competent interpreters where required. The police should have the ability to record the interview so that the victim does not have to recount the trauma multiple times.



Good practice : allow for formal report without the victim's consent

Allowing for a formal report without the victim's consent is a complicated matter. The Updated Model Strategies explicitly provide that the responsibility for pursuing charges and prosecuting rests with the

police and prosecution.²¹⁸ The criminal procedures should never place this heavy burden on the female victim. However, there is also the balance of ensuring the victim's agency and promoting her empowerment. The international standards recognise that victims are more empowered and in a place where they have full access to civil and criminal justice if they have access to free legal aid and interpretation services and access to qualified personnel who can provide victim advocacy and support services, such as independent support persons.²¹⁹

Best practice specifies that, at a minimum, legal regimes dealing with domestic violence should take a pro-arrest and pro-prosecution approach.²²⁰ This means that the domestic law should require state officials to conduct effective official investigations into all incidents of domestic violence of their own volition and, without waiting for a complaint to be made, outline fully to women which legal avenues are available to them and offer them the necessary support and assistance to proceed with the complaint. Additionally, officials should bear the responsibility of initiating legal proceedings in certain circumstances, even where a woman does not file a complaint or withdraws the complaint. For example, this may be necessary in cases involving occurrences or threats of physical violence, a history of violence or where there are other risks of repeated incidents. Meanwhile the victim's safety and well-being should always be the priority and considerations such as marital unity or cohabitation should not feature.

Making gender-based violence crimes against the state rather than crimes against the person

A trend can be seen towards repealing legal procedures that require the victim of violence initiate the investigation and prosecution in the case.²²¹ For instance, in Indonesia, the draft 'Elimination of Sexual Violence' Bill would categorise sexual violence as a criminal offence. In the Philippines the Anti-Violence against Women and Their Children Act, Section 25 reclassifies violence against women and their children as a public crime. It provides: 'Violence against women and their children shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.'

Expanding who may lodge a complaint

In some countries, legislation provides for various avenues whereby different persons can lodge a complaint of domestic violence, thereby not having to place the onus on the victim to file a complaint. Under some laws, the police may file a complaint on behalf of the victim. In Cambodia Article 10 of the Law on the Prevention of Domestic Violence and the Protection of Victims provides for that someone who qualifies as 'judiciary police' can act as the complaining party instead of the victims in criminal matters. This includes officials of the Ministry of Women's Affairs who work in the fields regulated under the law, and who may obtain the same legal qualifications as judicial police and then act as the complaining party instead of the victim, in accordance with the penal procedure in effect.²²² The formalities and procedure of qualifications of these public

²¹⁸ Updated Model Strategies and Practical Measures, Article 18.

²¹⁹ Updated Model Strategies and Practical Measures, Article 18.

²²⁰ United Nations, *Handbook for Legislation on Violence against Women*. 2010, pp. 37-38; United Nations, *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries based on International Standards and Good Practices*. 2011 p. 49.

²²¹ OSCE. 2009.

²²² Response of the Government of Cambodia to the questionnaire on violence against women, 2008, from EVAW global data.

agents are determined by the Prakas (Circular) 022 of the Ministry of Women's Affairs issued 7 September 2007 and by the Prakas (Circular) 64 of the Ministry of Justice issued 30 October 2007. In Lao PDR the Law on Preventing and Combating Violence against Women and Children, article 57, lists a number of persons who have the right to file a complaint or petition, including the victim, the victims' representation or the organisation that the victim belongs to, individuals, legal entities or organisations that have found or seen the violence against women, medical doctors, Labour and Social Welfare staff members or social workers, teachers, professors, care givers, police officials and other professionals who have found or seen the violence against women or children.



[W]e saw that the women need support to make them feel safe, feel comfortable when they share information. That's why judicial police agents have four functions, four roles according to the inter-ministry accord between the Ministry of Women's Affairs and the Ministry of Justice. To become the judicial police agent, you need to agree and then take an oath at the provincial court. One is the right to intervene in the case and write a minute on the intervention, when the case happens, they can write on it. Second, they can be the representative (e.g. relative) of the victim who are minors or victims who have mental issues. Third is to investigate the cases, along with the MOI judicial police officer. It means that when the case happens and the judicial police can go to see the scene and support to find the evidence, interview the victim on how to write the minute for the judicial and collect all to send to the prosecutor. And the fourth role is the file of the case at the court. It means when the police officer has sent the evidence for example in the domestic violence or rape cases to the court then the judicial agent can go to the court and ask now about the status of the case ... and can support the victim on time for accompanying them to the court or telling them about the process, ... to keep them informed.

*Lawyer from Cambodia*²²³



Good practice : prohibition of the police from engaging in informal mediation

In a number of Southeast Asian countries, domestic violence cases are resolved informally as a result of custom and community pressures on women to not pursue formal recourses or seek punitive measures, especially against a spouse or intimate partner. A study in Viet Nam noted that the police pressure victims not to proceed criminally; for example, they suggest to the victim that a criminal record would mean that their children would not get jobs in the future.²²⁴ International standards recommend the prohibition of compulsory and forced alternative dispute resolution processes, including mediation and conciliation in relation to all forms of violence against women.²²⁵ The victim's safety and well-being should always be the

²²³ Interview with lawyer from Cambodia, TIJ's "Women as Justice Makers" project.

²²⁴ Skinnider E. Forthcoming.

²²⁵ UN Committee on the Elimination of Discrimination against Women (CEDAW). "CEDAW General Recommendation No. 33: Women's Access to Justice" 2015.

priority and considerations such as marital unity or cohabitation should not feature. Mediation or settlement should be contemplated only in exceptional cases and should only be pursued only at the instigation of the survivor, should be subject to court oversight, including an inquiry into the reasons why the person has chosen that course of action, and should be conducted by an independent third party and not a family member of a concerned party.²²⁶ The police should be prohibited from engaging in informal mediation in cases of violence against women. In order to prevent informal mediation practices, there needs to be a specific policy on the use of alternative dispute resolution, such as mediation, reconciliation and diversion from the criminal justice system.

Explicit prohibition

An explicit prohibition on the police engaging in mediation addresses the reality that the police officer often require cases of violence against women to go through mediation. In the Philippines, the law specifically restricts the police in undertaking mediation.²²⁷

Clear criteria for restorative justice processes

In some of the Southeast Asian countries where formal reconciliation measures exist, legislation has provided limitations on when mediation by grassroots reconciliation teams should not be used in gender-based violence cases. For example, in Viet Nam, the Law on Domestic Violence Prevention and Control sets out limitations as to when mediation by grassroots reconciliation teams should not be used, specifically if the violence reaches the threshold of administrative or criminal sanctions (section 22-24). In Cambodia, while mediation is allowed in some situations, the Law on the Prevention of Domestic Violence and the Protection of Victims provides in article 17: 'To participate in the implementation of the penal procedures in effect, the authorities in charge cannot intervene to reconcile or mediate the criminal offences that are characterised as felonies or severe misdemeanours'. Article 58 of the Lao PDR Law on Preventing and Combating Violence against Women and Children provides that mediation can be conducted only when there is agreement, or in other words, consent, from the victim, and mediation should follow the legal provisions. The law clearly provides that in cases that do not meet the criteria or conditions for mediation, the police investigation-interrogation officer shall open the investigation-interrogation as prescribed in the Criminal Procedures Law.

Box 41: Suggested criteria for restorative justice in cases of violence against women²²⁸

Restorative justice requires that the perpetrator of violence acknowledges his responsibility for the violence whereas meditation or reconciliation often focuses on how both parties can change their behaviour to avoid future violence. Clear procedures as to when to use restorative justice measures should include the following:

²²⁶ United Nations, *Handbook for Legislation on Violence against Women*. 2010, pp. 37-38.

²²⁷ Section 23(c) of A.M. No. 04-10-11-SC.

²²⁸ UNODC. "Handbook on Effective Prosecution Response to Violence against Women and Girls". 2014.



The process must offer the same or greater measures of protection of the victim's safety as the criminal justice process.



The perpetrator has accepted responsibility.



The criminal justice provider approves.



The mediators are trained and qualified.



A validated risk assessment has determined that the woman is not at high risk.



The victim is fully informed of the process and she approves of the mediation.



The victim consents to participate.



Referral to the mediation process should be made after the perpetrator has been charged with a crime and with the approval of the prosecutor or investigative judge.



Qualified personnel must determine that the case is not high-risk and that the victim is fully informed and has consented.

3. SAFETY AND PROTECTION

Any criminal justice response that places victims at the centre of consideration emphasises practices that effectively address the protection of the victims from further harm. Not only is the victim's safety and well-being a stand-alone objective, but by putting victim safety and dignity at the core of any criminal justice intervention, this likely will increase her willingness to cooperate with the criminal justice system.²²⁹ Given the importance of victim-centred criminal justice responses, this section is set out immediately following the one on early detection and reporting, since the first priority once cases of violence against women are identified and known must be for the victim's safety.

Box 42: Updated Model Strategies and Practical Measures

Article 15 urges Member States to:

- ❖ Provide the police officer and other law enforcement agencies with judicial authorisation where required, with adequate powers to enter premises and conduct arrest in cases of VAW and to take immediate measures to ensure the safety of the victim.
- ❖ Provide the police officer and courts authority with the power to issue and enforce protection and restraining or barring orders, including removal of the perpetrator from the domicile, prohibiting further contact, issuing child support and custody orders and to impose penalties for breaches of those orders. If such powers cannot be granted to the police officer, there is a need to ensure timely access to corresponding decisions by the court. Such protection measures should not be dependent on the initiation of a criminal case.
- ❖ Provide comprehensive services and protection measures that ensure the safety, privacy and dignity of victims and their families, without prejudice to the victim's ability or willingness to participate in the criminal case.
- ❖ Protect victims from intimidation and retaliation during the criminal justice process, including by establishing comprehensive witness and victim protection programmes.

Article 16

- ❖ Promote specialised police units or personnel.
- ❖ Conduct risk assessments that indicate the level or extent of harm that victims may be subjected to based on their vulnerability, the threats to which they are exposed, the presence of weapons and other determining factors.

Article 18

- ❖ Provide efficient and easily accessible procedures for issuing restraining or barring orders and ensuring that victims are not held accountable for breaches of such orders.
- ❖ Ensure children who witness violence in the family are seen as victim of violence and provided with protection, care and support.

229 UNODC *Blueprint for Action*. 2014.

3.1 Protection measures

A victim's protection needs can be immediate and long term. She might require protection throughout her cooperation with the criminal justice system or she might be seeking protection without wanting to initiate the criminal justice processes. Although the protection of women is of general importance whenever they are dealing with justice institutions, women who are survivors of domestic violence are particularly vulnerable, for social and economic reasons, to threats, harassment and other harm before, during and after legal proceedings.²³⁰ Criminal justice providers need to be aware that women and their families are often at greatest risk of violence after their departure, or the perpetrator's forced departure, from the family home. Whichever criminal justice agency receives a report of violence, they should respond immediately in order to ensure that the victim is protected and supported. International standards urge states to ensure that the police can take swift action to ensure the safety of the victims, whether on their own initiative or by rapidly accessing the courts.²³¹



Good practice : protection that is empowering

Good practices in protection should restore a women's sense of self-worth since victims commonly share a sense of shame and guilt after the violence. This means that a crucial principle of any protection measure is the need to respect women's rights, dignity and privacy and confirm their strength as survivors. Women should be given information, advice and options, which place women in the best position to make choices that suit their circumstances. 'Protection should not be offered in a paternalistic manner, but should be viewed as a means to afford women safety so that they can develop their own strengths and strategies for coping with violence.'²³² In the Philippines, the Anti-Violence against Women and Their Children Act section on protection orders clearly indicates the purpose behind them: 'the relief granted under a protection order serve the purpose of safeguarding the victim from further harm, minimising any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life'.



Good practice : availability of both criminal and civil protection measures

Appreciating that the protection needs of victims of violence against women can differ and that there is no 'one size fits all' approach to protection, many of the national legal frameworks in the region provide for criminal and civil protection measures. This diverse range of legal protection can meet their varied circumstances. Flexible and broad practices take into account different forms of violence, different contexts in which the violence occurs, the relationship to the perpetrator, the history of abuse (repeated or a single incident), and whether or not there is immediate danger. Some women need protection but do not want to make a report to the police or engage the criminal justice system. Civil protection orders can provide this. If women have reported a crime, the criminal justice system also offers a variety of protection measures. In most jurisdictions in the Southeast Asian countries, the authority to issue protection or restraining orders comes under both criminal and civil law. These types of orders are usually classified as quasi-criminal, as the process may be criminal but the standard of

²³⁰ UN Committee on the Elimination of Discrimination against Women (CEDAW). "CEDAW General Recommendation No. 33: Women's Access to Justice" 2015. Para 18 (g).

²³¹ Updated Model Strategies and Practical Measures.

²³² OSCE. 2009.

proof is lower or the process is civil but the breach is a criminal offence. There is a great deal of variety in the different States regarding these types of orders.

Protection measures not dependent on initiation of criminal proceedings

Research shows that many victims call the police in order to stop the violence rather than to report a crime.²³³ Recognising the complexities of domestic violence, international standards require states to ensure that comprehensive protective measures are taken where necessary to ensure the safety of victims and their families, without prejudice to the victim's ability or willingness to participate in an investigation or prosecution.²³⁴ Or in other words, protection measures are not dependent on initiation of criminal, civil or family law proceedings.



Good practice : protection measures under the criminal regime

Criminal justice systems should have available protection measures for those victims who are going through the criminal justice system.

Availability of peace bonds

Criminal justice protection orders, or peace bonds, are orders that are initiated in a criminal court, but the standard of proof for issuing them is lower than in criminal trial. Generally, the court which has power to issue an order must be satisfied that the woman has reasonable grounds to fear personal injury or damage to her property. The order lasts a certain period of time (e.g. 12 months) during which the perpetrator is required to keep the peace and be of good behaviour. The order may carry conditions, including that the perpetrator does not possess a firearm, not communicate with the individual in question, and keep a specified distance from places that the victim frequents. If he does not agree with the order, criminal proceedings will proceed, or if he fails to comply with the order during the time period, he may be imprisoned. In the Philippines the Anti-Violence against Women and Their Children Act, Section 23 covers a bond to keep the peace. The Court may order any person against whom a protection order is issued to give a bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented. Should the respondent fail to give the bond as required, he shall be detained for a period depending on which forms of domestic violence have been committed.

Pro-arrest, detention or conditional pre-trial release

In most jurisdictions, a person who has been arrested may be released on bail or recognisance, either by the police or by a judicial officer. To counter the traditional reluctance to arrest suspects in intimate partner violence cases, some countries have adopted pro-arrest policies. This can be a dangerous time for the victim, and it is essential for the police officer or prosecutor to be aware of and present or consider all the relevant facts concerning the accused's risk, to give the victim prior warning of the accused's impending release, and to impose appropriate

²³³ Johnson, H. "Protecting Victim's Interests in Domestic Violence Courts". 2010. Muriel McQueen Fergusson Centre for Family Violence Research University of New Brunswick.

²³⁴ Updated Model Strategies and Practical Measures; UNODC. *Blueprint for Action*. 2014.

conditions on the release. With conditional pre-trial release, ensuring a range of bail conditions that take into account the victim's safety concerns is important for ensuring her protection. In Malaysia the 2017 Domestic Violence Act Bill is seeking to expand the available bail conditions to include exclusive residence conditions and cover communications through third parties.



Good practice : easily available civil protection measures

Irrespective of criminal recourse, victims go to the police officer, social workers or to the courts to seek protection. There are a number of different types of civil protection measures. Often such orders are a civil remedy, usually considered in conjunction with a related application, such as divorce or a civil suit for personal injury. They are issued on the basis of a balance of probabilities. In the civil protection regime, it is important to clearly distinguish between the role of the police and the role of others such as social workers or local government officials, the role of courts, and the ability of the woman to obtain a protection order even if she does not make a report to the police. It is considered good practice to ensure that civil laws allow applications for protection relief in the absence of other legal actions. In the Philippines, the application for a protection order may be filed as an independent action or as incidental relief in any civil or criminal case. In some countries emergency protection orders can be obtained by police officers at the scene, on a 24 hour-basis, by telephone request to a Justice of the Peace, or by a fast track / rapid access to appropriate courts which are accessible after normal office hours. Under the Lao PDR Law on Preventing and Combating Violence against Women and Children, Article 44 provides for emergency protection measures where the police can immediately issue such protection measures before reporting to the People's Court if necessary and urgent.

Application procedures are simple and user-friendly

Women are entitled to have efficient, easily accessible and free of charge application procedures that do not require a lawyer. In Singapore, the new way to apply for protection orders is considered victim-friendly as victims are assisted by a social worker. The Family Court has actively promoted more client-oriented services. It runs a Volunteer Support Person programme to offer assistance to victims of family violence. The victims may be assigned a Volunteer Support Person to help them through the emotionally trying court process, by accompanying them during court hearings and giving them emotional (as opposed to legal) support. In Singapore, the Family Court has an intake section solely to serve applicants for a Personal Protection Order, which receives an assessment of their safety needs once the application is filed. Personal Protection Order applications can also be made through remote video-conferencing from designated social service agencies located in housing districts. In the Philippines, standard protection order application forms have been prepared, written in English with a translation into the major local languages. Further, the Act also states that Barangay officials and court personnel shall assist applicants in the preparation of the application. Law enforcement agents shall also extend assistance in the application for protection orders in cases brought to their attention (section 13 of the Anti-Violence against Women and Their Children Act). In Brunei Darussalam, new legislation establishes a civil protection order regime aiming to make the procedures for protection orders as simple as possible, since the victims are unlikely to be versed in legal procedure and may well be illiterate or have a minimal educational background.²³⁵

235 Yusree Junaidi, M. and Sharbawi, Z. "The Protection of Victims, Particularly Women and Children, against Domestic Violence, Sexual Offences and Human Trafficking – the Brunei Experience". Attorney General's Chambers, Brunei Darussalam. Date unknown.

Others can apply on the victim's behalf

The onus to apply for protection order should not solely be on the victim. In the Philippines, the Anti-Violence against Women and Their Children Act allows for others to apply for protection orders on behalf of the victim: family members, social workers, police officers, Barangay officials, lawyers, counsellors, therapists or healthcare providers of the victim. The Act also provides that at least two concerned responsible citizens who live in the community where the violence has occurred and have personal knowledge of the offense committed may file a petition for a protection order on behalf of the victim (section 9(h)).

Timeliness of protection orders

In Indonesia, Chapter VI outlines the protection provisions under the Domestic Violence Law. Article 16 provides that, within 24 hours from the time of knowing or receiving a report on violence in the household, the police shall be obliged to immediately provide temporary protection to the victim. Furthermore, the police shall be obliged to request a protection instruction ruling from a court. In Singapore, in cases where the victim faces "imminent danger" the court may issue an expedited order, which can be ordered immediately, pending the trial. An expedited order will last for 28 days or until the trial commences (whichever is sooner), but the court may extend the duration of an expedited order. In Viet Nam, under the Domestic Violence Law Prevention and Control, after receiving a written request, the President of the commune-level People's Committee shall consider and decide to apply the ban-from-contact measure within 12 hours from the time of receiving the notice.

Ensuring the safety of the victim during the application for a protection order

Scholars in Brunei Darussalam note that while the new legislation does not criminalise domestic violence, the police are given special powers in dealing with instances of domestic abuse, including detaining the alleged abuser prior to the application for a protection order.²³⁶

Providing for a range of types of civil protection orders

Many countries in Southeast Asia include a range of different protection orders, such as urgent and emergency protection orders as well as longer and more permanent orders. Emergency measures refer to those measures that can be obtained *ex parte* (i.e., without notice to the perpetrator, not requiring gathering of full evidence and decided on a balance of probabilities). Urgent measures are those that go to court without delay, such as through fast track procedures, but decisions are based on a full hearing of the evidence. Emergency measures are generally for shorter term protection measures whereas urgent protection measures are usually for longer period of time. Longer term protection measures usually require a full hearing allowing the perpetrator to be heard.²³⁷ In Malaysia, the Domestic Violence Act provides for a number of different protection orders: Emergency Protection Orders (EPO); Interim Protection

236 Yusree Junaidi, M. and Sharbawi, Z. "The Protection of Victims, Particularly Women and Children, against Domestic Violence, Sexual Offences and Human Trafficking – the Brunei Experience". Attorney General's Chambers, Brunei Darussalam. Date unknown

237 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

Orders (IPOs) and Protection Orders (POs). In the Philippines, there is a wide range of protection orders available under the Anti-Violence against Women and Their Children Act: the Barangay protection order (BPO), the temporary protection order (TPO) and the permanent protection order (PPO).

Reducing the evidentiary rules in protection hearings

It should be ensured that evidentiary rules in protection hearings are not interpreted in a restrictive or discriminatory manner.²³⁸ Evidentiary burdens should be reduced, for example by allowing applications to be made solely on the basis of affidavit evidence.

Not requiring a formal report of a crime to the police

Protection order should be accessible to victims of violence who do not want to go through the criminal justice system. Such orders are not intended to replace criminal charges and may be issued on their own or in addition to criminal charges. There has been a tradition of linking the application for a protection order with making a report to the police, as has been done in Malaysia. However, one way around this has been to have two types of police reports: a 'cover report' versus an 'action report.' In addition to this, the 2017 Bill to amend the Domestic Violence Act contains provisions to provide for Emergency Protection Orders (EPO). The EPOs will be issued by a social welfare officer and there is no requirement for the victim to make a police report or to launch an investigation. Once the victim gets an EPO (which is not a court order and therefore a breach of it is not considered a criminal offence), she can convert it into an IPO or a PO. If a victim decides to make an application to convert an EPO to an IPO or a PO, the victim will have to launch a police investigation. The EPO would be valid for 7 days after issuance and service of the order on the perpetrator. It will be up to the police officer to serve the order after they receive a copy of the EPO from the social welfare office (who has 10 hours to forward it to the police and then the police should serve it within 12 hours upon receiving a copy). The draft Bill provide for punishment for contravention of the EPO and does mention it will be an offence and be liable to a fine not exceeding two thousand ringgit or imprisonment for a term not exceeding six months or to both and increases the punishment for second or subsequent violations. While the EPO acts as an immediate temporary protection, lasting 7 days, victims who have longer protection needs will still be required to participate in a police investigation.

Hold authorities accountable for a failure to act on an application for a protection order

In the **Philippines** the Anti-Violence against Women and Their Children Act Section 18 sets out a mandatory period for acting on applications for protection orders. Failure to do so without justifiable cause shall render the official or judge administratively liable.

238 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.



So there is a very good remedy provided by RA 9262 which is the Barangay Protection Order. Second it is the temporary protection order issued by the court and the Permanent Protection Order issued by the court also. So the BPO is issued by a Barangay chairperson, the leader in the village. **So if violence occurred in a home and the wife complains before the Barangay, the Barangay chairman or chairperson can issue a Barangay protection order. It is an order that the male offender can be removed from his house in order to give protection to the women and the children. So that is one and the offender cannot file an action against the Barangay for meddling in the domestic violence. That is one very good remedy because it is an emergency situation so the Barangay can easily go to the house of the offender and remove him from the place and probably bring him to jail.** On the other hand, the TPO and the PPO are issued by the court after filing a case. So if that is an emergency case, the victim is provided a form, just a check-list. The victim does not have to prepare a narrative complaint. There is this form to be checked only. And she can be assisted by a social worker from the court or from the local government. So upon filing on this PO, the court can issue this TPO where the offender can be removed from the house or the victim can collect all her belongings and even the custody of the children can be given to her. That is a very quick remedy. So that complaint can be annexed to a criminal case as an additional proof.

A judge from the Philippines



Good practice : broad range of conditions available for inclusion in protection orders

The authorities should be able to include a wide range of provisions to respond to individual cases and level of risks. The range of conditions could include: removal of the perpetrator from the domicile; prohibiting further contact with the victim and other affected parties, inside or outside the domicile; issuing and enforcing spousal and child support and custody orders; the victim is to be put on leave from employment, and not subject to employment termination, if stalked at the workplace.²³⁹ Other conditions could include: reimbursement of damages; non-possession of firearms; and requiring perpetrators to undergo intervention programmes. In Brunei Darussalam, the court has the authority to award compensation in respect of such injuries, destruction, damage or loss as it considers just and reasonable at the time of the protection order. In Lao PDR, one of the conditions that can be included in a protection order under the Law on Preventing and Combating Violence against Women and Children (article 43) is that the perpetrator of the violence is to participate in a rehabilitation program if the perpetrator is addicted to alcohol, drugs, has mental problem. In Singapore, the civil protection order regime includes mandatory counselling for perpetrators. A government publication, 'Protecting

²³⁹ UNODC *Blueprint for Action*. 2014.

families from violence' claims (based on a 2004 survey) that the court-ordered mandatory counselling can be effective against recurrence of physical violence, but that verbal abuse is still common.²⁴⁰



What we found [in our research] is that this mandatory counselling programme is helpful in doing a couple of things. **Number one, is that because it is mandatory, people have to come so we have access to not just the victims but also the perpetrators, which is really important because not many perpetrators step forward voluntarily on their own to get help. Secondly, it is mandatory, after the court issues mandatory counselling, after six months the judge will evaluate the progress by bringing the parties back to court'.** ... Having a mandatory counselling programme helps us to offer support. We still know what is going on, that is very high for mandatory clients, as opposed to voluntary ones, because they are not held back by a mandate so at any point in time they can just drop out from the programme.

NGO staff member from Singapore.



Trend toward allowing for emergency barring orders in domestic violence cases

Barring orders gives exclusive occupation of matrimonial homes to the victims of domestic violence or orders the exclusion of the perpetrator from the premises where the victim ordinarily is residing. This is based on the principle that the offender and not the victim should have to leave the home.²⁴¹ This can include provisions granting the victim exclusive occupation of the family home, regardless of ownership. In Cambodia, the Law on the Prevention of Domestic Violence and the Protection of Victims provides for a broad range of conditions and explicitly deals with issues of property: prohibiting the destruction of property or instructing not to put on sale property of the victim or of the victim's relatives, or of joint property (article 14).

Box 43: Broad range of conditions available in the Philippines

In the Philippines, the Anti-Violence against Women and Their Children Act provides for the following types of conditions:



Prohibiting further violence or threats of violence, personally or through another.

²⁴⁰ Ministry of Community Development, Youth and Sports. "Protecting Families from Violence: the Singapore Experience". October 2009.

²⁴¹ UNODC Blueprint for Action. 2014.



Prohibiting harassing, annoying, telephoning, contacting or any other communication with the victim, directly or indirectly.



Barring from the victim's residence, regardless of ownership, and having a police escort when the perpetrator is gathering his personal belongings.



Restraining order – stay away from residence, school, place of employment or any other place.



Use of automobile to the victim, regardless of ownership.



Child custody – temporary or permanent to the victim.



Child support and / or spousal support.



Prohibiting possession of firearm or deadly weapons.



Restitution for actual damages caused by the violence.



Good practice : effective enforcement of protection orders

Protection measures should be effective immediately. Clearly defined roles and responsibilities are needed for their enforcement. This includes ensuring that the proper authorities have copies of the order and that the order is served upon the abuser immediately. The victim should never be required herself to serve the order on the offender. Instead, the onus is on the state authorities for serving the order promptly. Copies of protection measures must be sent by courts to the police; copies are shared

with and are retained for easy access by frontline officers and dispatch staff. In situations where the suspect is detained, the detention facility staff should be informed of protection measures and they should be requested to closely monitor any external communications in order to prevent breaches (for example, by telephone or email).²⁴² A registration system should be established for judicial and police officer issued protection orders, so that the police officer or criminal justice officials can quickly determine whether such an order is in force.²⁴³

Effective monitoring tools

The orders should be monitored in order to ensure that the suspect attends a rehabilitation process. This can be done, for example, through the use of electronic ankle bracelets or partnering with civil society. In one example, the police, in cooperation with an NGO and a private corporation, provides women who are at high risk with a mobile security alarm which alerts the police officer when they are in danger as well as provides cell phones to increase women's safety while traveling to work, school or leisure activities. In another example, jailers are required to record and notify victims of all threats made against the victims by detained offenders.²⁴⁴

Breach of a civil protection order is a criminal offence

In Malaysia, the Criminal Code defines a breach of a Protection Order as a crime. In one case, a repeat offender was jailed for 12 months for the offence of breaching a Protection Order.²⁴⁵ In Singapore the breach of any Personal Protection Order, Domestic Exclusion Order or an Expedited Order is a criminal offence punishable by a fine not exceeding \$2,000 or by imprisonment for a term not exceeding 6 months, or both and, in the case of a second or subsequent conviction, by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months or both.

Prosecutorial policies to promote the laying of additional charges

Prosecutorial policies promote the laying of additional charges against offenders who threaten victims during criminal proceedings. In Malaysia, the accused will be charged with the additional violence as well as with breaching a court order.

3.2 Risk assessment and safety planning



Good practice : broad range of conditions available for inclusion in protection orders

The police need to acquire as much information as possible regarding the situation and the individuals involved. They should understand and carefully assess risk factors such as threats of homicide or suicide

²⁴² UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

²⁴³ UNODC Blueprint for Action. 2014.

²⁴⁴ International Centre for Criminal Law Reform and Criminal Justice Policy. 1999.

²⁴⁵ Women's Aid Organization. "Working Together: Case Studies in Domestic Violence Response". 2015. <http://www.wao.org.my/Working+Together:+Case+Studies+in+Domestic+Violence+Response+2015+Report_121_6_1.htm.

and increase in the frequency and severity of violence. Global recommended practice is for the police to conduct risk assessments in order to indicate the level or extent of harm that victims may be subject to, based on their vulnerability, the threats to which they are exposed, the presence of weapons and other determining factors.²⁴⁶ There are a number of factors that can indicate whether the victim is in danger of being killed or further harmed by the perpetrator. In Singapore, the risk assessment is not done by the police but by the Legal Aid Bureau. This research was not able to review the risk assessment instruments being used.

Box 44: Relevant information to collect in the risk assessment²⁴⁷

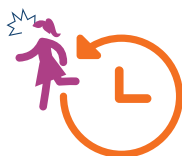
Whether there is a history of violence; the victim's/survivor's fear of future violence and the basis for that fear; the victim's/survivor's opinion on the likelihood that the abuser will obey the terms of release; any threats of and/or escalation of violence. Steps should be taken in order to ensure that the risk assessments include at a minimum an assessment of:



Lethality risk and risk of repeated violence.



Level or extent of harm to the victim/survivor, her family or other relevant persons.



Prior victimisation.



The threats to which she is exposed and the presence of or threat to use weapons.



Evidence of escalating violence or intimidation.



The status of the relationship.

²⁴⁶ Updated Model Strategies and Practical Measures, Article 16.

²⁴⁷ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

4. VICTIM ASSISTANCE AND SUPPORT

Victim-centred criminal justice practices place the victim's needs at the core of any intervention. A woman subjected to violence can have many needs, and these are often complex and inter-related. She requires a broad range of support, including legal assistance, medical care, psycho-social support, housing, security and shelters, financial support and employment services. While the state has the obligation to respond to the victim's needs, the criminal justice agencies might not directly provide or be responsible for providing support for all of the victims' needs. However, these agencies should inform victims of, and facilitate and refer victims to, available assistance and support services.

Box 45: Updated Model Strategies and Practical Measures

Article 15 urges Member States to:

- ❖ Provide comprehensive services and protection measures that ensure the safety, privacy and dignity of victims and their families, without prejudice to the victim's ability or willingness to participate in the criminal case

Article 18

- ❖ Provide victims with information on rights, remedies and victim support services and how to obtain them
- ❖ Provide victims with full access to civil and criminal justice, including free legal aid and interpretation services
- ❖ Provide victims with access to qualified personnel who can provide victim advocacy and support services, such as independent support persons
Such support services should be specialised for different women who are subjected to various forms of violence

4.1 Legal assistance and legal aid

Legal assistance can prove critical to a victim's ability to access civil protection as well as criminal justice. In addition to the practices aimed to increase legal knowledge as discussed in section one, a good practice is seen to be providing women legal advice and representation. Women face a great deal of stress and intimidation in criminal cases and in seeking civil protection orders. The law alone may be insufficient and a victim requires more engaged legal assistance. This can be done through legal aid programmes, lawyer pro bono programmes, or paralegals or non-lawyer advocates who are trained to assist women in going through the criminal justice process. The international standards define 'legal services' as including legal information, legal advice, legal assistance and legal representation.²⁴⁸

248 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.



Good practice : effective right to legal assistance

In some of the Southeast Asian states, victims have standing in criminal cases, as *partie civile*, and have the right to legal counsel. In other states, usually those based on the common law tradition, the victim does not have this right. In these adversarial systems, the prosecutor is seen as providing legal assistance to the victim but representing the state's interest rather than the victim's. Nevertheless, whatever legal tradition is present in the country, the victim is not the plaintiff in the criminal case, and it is not her responsibility to push the case through each stage of the system. It is important to recognise that the goal of the prosecutor may clash with the victim's interests and with her instructions to her lawyer. Particularly in domestic violence situations, the prosecutor may be seeking conviction when the victim is not. She may have involved the criminal justice response in order to stop the violence and to be safe but not to punish her intimate partner. In such cases, legal assistance and support is especially important if survivors of violence are to understand, effectively participate in, and be fully protected by the legal system in the context of the criminal trial of the alleged perpetrator. For instance, the Lao PDR Law on Preventing and Combating Violence against Women and Children provides that the victim should receive legal assistance, such as legal counselling and advice, and have a lawyer or other legal protector who can protect her rights and act as the victim's representative to defend the case in court (Article 38).

Box 46: Innovative approaches to allowing for the right to limited legal assistance for victims in adversarial systems

In some adversarial criminal justice systems, states are increasingly recognising the need for legal assistance for women victims of violence and are exploring how to give limited legal representation to victims in criminal cases. Canada is reviewing its criminal procedures in sexual violence cases and considering allowing victims to have their own lawyers to represent them during certain applications, such as introducing potentially discriminatory evidence (e.g. such as past sexual history). This is seen to be necessary, since the reputation and behaviour of the victim is often attacked by defence counsel in order to undermine the victim's credibility and raise a reasonable doubt as regards the responsibility of the alleged perpetrator.



Good practice : available legal aid to victims of gender-based violence

The international standards urge states to provide legal services at no cost for those without sufficient means or when the interests of justice require.

Recognising lack of control of family income in domestic violence situations

The international standards also provide that if the means test, an official investigation into her financial circumstances to determine whether she is eligible for legal aid, is calculated on the basis of the household income of a family, and the alleged perpetrator is a family member or

249 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

the victim does not have equal access to the family income, only the income of the victim applying for legal aid should be used for the purpose of the means test.²⁴⁹ In the Philippines, the Anti-Violence against Women and Their Children Act provides that the lack of access to family or conjugal resources by the applicant, such as when the same are controlled by the perpetrator, shall qualify the petitioner to legal representation by the Public Attorney. As an interview with a Public Attorney highlighted, the law removed the indigence test because *'[W]e believe that many women are also subjected to economic abuse and it is defined under RA 9262 as violence. So the problem is that most of the time the victims are victims of economic abuse so even if technically they have money, the abuse concerns the withholding of the resources so the office decided to dispense with the requirement of the test.'*

Legal aid specifically for victims of gender-based violence

In some countries in Southeast Asia, legal aid is provided in certain kinds of gender-based violence cases irrespective of means. In Viet Nam, the recent revision to the legal aid law has victims of domestic violence, for the first time, included in the beneficiary list to receive State-funded legal aid that does not require a means test. It is important that administrative processes to obtain legal aid are free and simple.²⁵⁰ Lao PDR's Law on Preventing and Combating Violence against Women and Children specifically notes that victims from poor families shall receive legal assistance free of charge. In July 2015, the Association for the Development of Women and Legal Education (ADWLE) established the Legal Aid Clinic for Vulnerable Women providing legal aid for female victims of gender-based violence in Lao PDR.²⁵¹ Its mandate includes: representing women and girls suffering from gender-based violence during mediation sessions and throughout the national court system; offering general legal advice to the villagers; and raising awareness about the rights of women and girls in the target villages where gender-based violence is particularly widespread. The Clinic is run by lawyers and paralegals trained in applicable laws as well as case documenting and reporting.

Legal aid for protection orders

In the Philippines the Anti-Violence against Women and Their Children Act provides that if, in her the application for a protection order, a woman requests the appointment of counsel because of the lack of economic means to hire a counsel, the court shall immediately direct the Public Attorney's Office to represent the petitioner in the hearing on the application (section 13).

Innovative methods to expand coverage of legal aid

Using information technology (IT) can expand access to legal information and legal services. In Singapore, the Legal Aid Bureau, now under the Ministry of Law, was established in 1958 to provide legal advice, assistance and aid to persons of limited means on civil matters. The Singapore Family Court's website provides one-click-away resources on procedures and common law issues, as well as updates on hearings. In addition, a robotic assistant can answer users' questions at all times and help them navigate through the website.

²⁵⁰ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

²⁵¹ Information from the Association for the Development of Women and Legal Education (ADWLE) website. <<http://adwlelaos.org/>>



Good practice : legal aid that is gender-sensitive

Legal aid needs to be gender-sensitive. In Indonesia, the Women’s Legal Aid of the Indonesian Women’s Association for Justice (LBH-APIK) has a core mandate to provide community-based legal aid, train former clients and victims to be paralegals and ultimately encourage the transfer of skills and knowledge to the community. LBH APIK also carries out policy advocacy to change the laws that are not responsive to women’s needs.²⁵² In Viet Nam, UN Women developed a checklist for gender-responsive legal aid policies for the National Legal Aid Agency.



Good practice : expanding legal assistance available beyond state-funded legal aid

In Malaysia, an NGO has developed a ‘Watching brief lawyer’ programme whereby pro bono lawyers put forward the victim’s interests during the criminal justice process. The NGO is lobbying to obtain the right of victims to have some sort of legal assistance in criminal cases. At the moment, these lawyers hold *amicus* briefs, and so it is up to the discretion of the judge whether or not to allow them a voice in court. There is currently no Criminal Procedure Code provision in Malaysia allowing for these lawyers to speak in court on behalf of the victims.

4.2 Victim and witness support services

Victims need a wide range of support, including psychological support, counselling, advocacy, medical and legal help as well as shelters, child support, education and job training. Recognising that criminal justice services should be part of a comprehensive and coordinated approach involving health and social services, this section focuses on victim and witness support services that are connected to the criminal justice system. However, it is important to note that all services should be available to the victim irrespective of whether she participates in the criminal proceeding or not.



Good practice : victim support services within criminal justice agencies

Criminal justice agencies may have victim support workers embedded within their organisation. Such workers provide emotional and psychological support and information as victims go through the criminal justice system. These practices prevent or reduce secondary victimisation of the victims, reduce the risk of the victim withdrawing into self-blaming doubts and maintain the victim’s engagement with the criminal justice system. Such services should ideally be focused on empowering women. They can also provide to criminal justice officials an understanding of common victim behaviours, the gendered nature of these crimes and appreciation of the obstacles victims face when dealing with the criminal justice system.

Providing information

Victim service workers provide information about rights and remedies, the victim’s role in and opportunities for participating in criminal proceedings; and other services available and how to obtain them, such as state compensation programmes, if available. They should keep individual

²⁵² Thailand Institute of Justice. 2016.

victims informed of the scheduling, progress and ultimate disposition of the proceedings, as well as any orders against the offender, and any decision that has an impact on their security (e.g. release of the abuser). In Singapore, the Police and Family Service Centres are linked to other assistance services, such as medical and psychological services, via the Family Violence and Child Protection networking systems. These networking systems ensure that appropriate and timely referrals are made. The Family Service Centres are neighbourhood-based social service agencies.

Having a support person

A support person should be available for the victim during her interview with the police and throughout the criminal justice practice, including at court, regardless of the form of the violence.

Tailored services for different victims

Specialised services and specific approaches to distinct forms of violence against women as well as particularly vulnerable groups, including immigrant women, trafficked women, refugee women, stateless women, women living in remote and rural areas, women with disabilities, etc. need to be developed and provided.



Good practice : providing practical assistance to be able to cooperate with criminal justice process

Some countries provide for practical assistance in order for victims to participate in the criminal justice system, such as covering transportation costs to and from court. One practical way of facilitating women victims' participation in any criminal or protection processes is allowing them to apply for paid leave from their employment. The Philippines Violence against Women and Their Children Act, section 42, provides that 'at any time during the application of any protection order, investigation, prosecution and/or trial of the criminal case, a victim shall be entitled to paid leave of up to ten days.' An employer who denies the application for leave shall be held liable. As one interviewee noted '*[S]ome victims do not know that they have the right to take that leave. But in order to mainstream that leave we distributed posters in different regions and provinces ... Actually the Department of Labour developed an animation about the ten days Violence against Women and Children Act leave on their website.*'

5. Investigation

The international standards emphasise the unique needs of victims of gender-based violence and urge States to use confidential and gender-sensitive approaches during questioning, evidence collection and other procedures related to the investigation.²⁵³ Investigations of violence against women crimes are undertaken by different criminal justice agencies in Southeast Asia, depending on the legal tradition in each State.

²⁵³ UN CEDAW Committee General Recommendation No. 33 on women's access to justice.

Box 47: Updated Model Strategies and Practical Measures

Article 15 urges Member States to:

- ❖ Ensure that the primary responsibility for initiating investigations lies with the police and prosecution authorities and does not rest with the victim, regardless of the level or form of violence

Article 16

- ❖ Ensure investigation and collection of evidence takes into account the unique needs and perspectives of victims of violence, respect their dignity and integrity and minimise intrusion into their lives while abiding by standards for the collection of evidence

Article 18

- ❖ Take measures that prevent hardship during the detection, investigation and prosecution in order to ensure victims are treated with dignity and respect whether they participate in the criminal proceedings or not

5.1 Victim-centred investigations



Good practice : laws and policies that promote early and meaningful case building

Early and meaningful case-building is needed, with investigative techniques being evidence-based and risk-focused. This includes ensuring that myths and stereotypes are consistently recognised and challenged during the investigation. Often when negative beliefs about sexual and gender-based violence are formally or informally embraced by the investigating bodies, the result is that the perpetrator's responsibility and criminality is downplayed and the blame is shifted towards the victim. Policies need to be developed to promote evidence building that focuses on the credibility of the allegation rather than the credibility of the victim.

Take into account unique needs of victims

In Malaysia, the laws were reformed to ensure that victims do not have to face the suspects in identity parades. Similarly, in Thailand, the Criminal Procedure Code, section 133 provides that in cases where the victim needs to confirm the identity of the suspect, the police must arrange this to be done in a proper place so that the alleged offender does not see the victim.



Good practice : specialised units of investigators

Establishing a dedicated specialised unit with trained investigators to handle violence against women cases contributes to consistency, a gender-sensitive response and accountability. These units generally have clear institutional policies or directives for the investigators on the management of these cases. For example, in Singapore a Specialised Sexual Crimes Branch under the Singapore Police Force Criminal

Investigation Department deals with managing and investigating cases of sexual crimes against women. In the Philippines, there are dedicated units or specifically trained investigators to work on cases involving violence against women, and the Malaysian Police officer has established a D11 unit as well as Victim Care Centres (VCCs) which are mainly concerned with evidence collection and investigation. The researchers were informed that the investigative officers have master's degrees in order to prepare them for providing counselling to the victim when giving their statements. In Singapore, the officers in the Specialised Sexual Crimes Branch are trained to investigate sexual crimes against women such as rape, sexual assault by penetration, and sexual penetration of a minor and has specially designed facilities aimed at minimising the trauma the victims face during the investigation process, including private counselling, consultation and waiting rooms that are furnished in soothing colours and décor.²⁵⁴



[B]ecause they face trauma, it can impair their memory and how they are sharing. And it would take a trained person to understand what she is saying and what she is trying to convey. And in the first interview statement, you would really need to be trauma-informed to even speak to them.

Singapore NGO staff.



Good practice : guidelines for victim-centred investigations

Victim-centred investigations mean taking measures that prevent hardship during the detection, investigation and prosecution in order to ensure that victims are treated with dignity and respect whether they participate in the criminal proceedings or not.²⁵⁵ A number of law enforcement and investigative units in Southeast Asian countries report having guidelines for handling investigations of violence against women. However, these were not reviewed for this report as the guidelines were not shared with the research team, due to 'internal rules'.



Let's say I believe that when the victim approaches me I need to talk with them with the friendly manner first. I understand that the nature of the victims of the rape case that they don't want to disclose their stories. They will feel so ashamed. We need to make trust first and the belief that they can rely on us.

After making the trust and familiarity, we will get very good quality and quantity necessary for the case. From my perspective, the way that the female interrogative police officers talk to the victims do not aim at the legal achievement of the case in the first place. We need to check other relevant aspect as well.

Female police officer Thailand.



Guidelines for all investigators

In Singapore, the Singapore Police Force has guidelines for Investigation Officers who handle cases involving violence against women and who are outside of the Specialised Sexual Crimes Branch. Part of these guidelines provides that advance notice be given to victims or social workers before the release of a family violence perpetrator from police custody. This aims to prevent a recurrence of violence by giving the victim or social worker more time to make safety plans, e.g. alternative accommodation, where necessary.²⁵⁶ In the Philippines, while the investigators guidelines were not reviewed, the electronic survey response by the police noted that certain procedures are available at the investigation stage to protect victims and avoid secondary victimisation, including: fast track case management of cases involving violence against women; and the obligation to keep victim informed of the investigative process and to undertake early and meaningful case building.

Guidelines for specialised units

In Singapore, the Specialised Sexual Crimes Branch under the Singapore Police Force Criminal Investigation Department has elaborated guidelines on managing and investigating cases of sexual crimes against women. The Malaysia Police D11 unit has guidelines for the police investigator on how to handle cases of violence against women. An interview with the unit revealed that, *'So to lodge a very first information police report, not a detailed one, it is just saying "I was sexually abused by somebody" and then this police officer, once he sees the complaint he will contact the investigating officer so the police inspector will go to the OSCC to interview the victim and waiting for the examination. The point of the OSCC is that the whole team should be there plus the welfare officer, the doctor, the investigation officer so this officer once they go to the OSCC, while waiting they would try to record the statement from the victim or maybe they would interview the family member who would accompany the victim.'*

Inter-agency protocols

A number of countries in the region with One Stop Crisis Centres have developed protocols for the police, forensic officers and healthcare providers for the collection and preservation of forensic evidence in cases of violence against women.

Box 48: Key elements to include in guidelines for investigators²⁵⁷

Guidelines for investigators can assist them in appreciating the complexity of violence against women situations. This includes certain aspects:

254 Information from the UN Women Global Database on Violence against Women. <<http://evaw-global-database.unwomen.org/en>>

255 Updated Model Strategies and Practical Measures, Article 18.

256 Information from the UN Women Global Database on Violence against Women. <<http://evaw-global-database.unwomen.org/en>>

257 UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

- ❖ The justice response during investigation focuses on the victim's needs, keeping in mind the victim's context, the physical and mental trauma she has experienced, and her medical and social needs.
- ❖ Investigations of gender-based violence crimes should be started in a timely fashion. Victims are not to be deferred or delayed, asked to wait to make a report, or be in any other way impeded in their effort to bring their case to the attention of justice authorities.
- ❖ Investigations are to be conducted in a professional manner, meet evidentiary and investigative requirements, and all available means to identify and arrest the suspect are to be used.
- ❖ Throughout the investigation, the woman's safety, security and dignity are carefully considered and maintained.
- ❖ Throughout the investigation, the victim is to be kept informed.
- ❖ Police services need to be free of charge and accessing the service should not place undue financial or administrative burdens on the victim.

5.2 Comprehensive and gender-sensitive investigations



Good practice : checklists for ensuring comprehensive and gender-sensitive investigations

The development of checklists for investigators can help to ensure all available evidence is collected in a consistent and timely manner in every case of violence against women, including common evidentiary issues in domestic violence cases and in sexual violence cases, where consent or identity is at issue. Studies raise the concern that many of the guidelines for investigating violence against women cases are based on the mythical 'typical or ideal rape case such as stranger rape involving force',²⁵⁸ which means that investigative processes and guidelines focus on violence committed by strangers. However, the majority of offenders are known. Stranger assault evidence collection is different from non-stranger assault evidence collection, which needs a focus on demonstrated lack of consent rather than identity or force. Good practices include developing different investigative techniques for different forms of violence against women. For example, in non-stranger rape, the issue of non-consent should be investigated, with the documenting of any form of resistance, how submission took place, anything said to try and dissuade the rapists, fears in relation to the context / environment and any other constraints on action. Investigative rules should be updated in order to take into account new forms of technology and use of social media. In the Philippines, the National Bureau of Investigation (NBI) are to develop and adopt a protocol in handling such cases and conduct regular inspections in order to ensure that procedures and personnel are gender-sensitive and gender-responsive.

The guidelines for the police and investigators were not shared with the research team nor were available in the public realm. However, from interviews and the desk review, it was found that there are good practices in this respect in some countries in the region. Checklists should cover how to gather certain types of evidence.

258 National Center for Women and Policing. 2001. As discussed in Kelly, L. 2005.

Box: 49: Types of possible evidence²⁵⁹

Statements	Photographs	Medical/ Forensic	Document	Other Evidence
Victim	Victim's injuries, with victim's consent	Top to toe examination of victim for injuries, evidence of force	Utterance of suspect	Cell phone calls
Neighbour	Suspect's injuries, if any (i.e. offensive injuries or injuries inflicted in self-defence by victim)	Swabs of potential areas of physical contact	Victim's injuries (using diagram)	Any previous history that can be relied upon as bad character including in relation to other partners
Eye witnesses	Scene of the crime (disrupted or destroyed objects, blood stains)	Body examination of suspect	Victim's demeanour	Emergency call recordings
Witnesses as to how victim was behaving before or after the incident (i.e. whether she was capable of consenting)		Crime scene evidence forensic examination (fingerprints, body fluids, footprints)	Suspect's demeanour	Cell phone mapping
Teachers		Hospital/emergency room records	Torn clothing	Voice message tapes
Colleagues at work		Toxicology (alcohol levels) including back calculation	Smeared makeup	Letter or email correspondence; change in behaviour / mood
Friends at school		Victim's spontaneous utterances made to medical staff	Disarray in house	Social network
Others				CCTV evidence Weapons Family court files

259 UNODC "Handbook on Effective Prosecution Response to Violence against Women and Girls". 2014.

Taking the victim's statement

The victim's statement should be taken promptly, and in a professional, non-judgmental and victim-sensitive manner. The statement should be recorded accurately and read back to the victim, and the content should be confirmed by the victim. In order to prevent or reduce the risk of re-victimisation, it is considered good practice to minimise the number of times the victim has to tell and re-tell her story, while appreciating that traumatised memories require patience and time to recall. Interviews should be done in private and respectfully, and with a professional interpreter if required. Directives should address a situation in which a victim is unable to provide a clear account and ensure that the investigator taking the statement explores whether she has learning difficulties, mental health problems, was under the influence of drugs or alcohol, or whether the trauma and fear has affected her ability to coherently or fully recount her experience. In Singapore, the Serious Sexual Crime Branch is considering the possibility of recording the victim's statement within the OneSafe Centres but this proposal is only at the discussion level for now. However, as one staff member of an NGO noted: *'[T]he police actually has just proposed ... they are currently looking at the criminal procedure code and evidence act and they had proposed video recording interviews and then their proposal was that the [video statement] would then be used as the oral evidence in chief in the court. In order to reduce the number of times that she would have to recall her story. But then our view on that was that it wouldn't actually reduce the number of times that she would have to tell the story in the reporting process and in fact there may be no practical way to do that that is also respectful of the sensitivity of having a recording of such things. And sharing it with others so our view is that it was not really a helpful thing to record this. As we feel that based on our experience of our clients that they would be unwilling to speak as freely if they knew that something was recorded'. In Thailand, after the preliminary fact finding has been conducted by the police and passed to the investigators, it is mandatory to have a team consisting of the investigator with a social worker or the psychologist involved in interviewing the victim.*



It is suggested using a brief statement of facts that can be passed around from officer to officer, from the hospital to other people, to the lie detector place. All these procedural places which actually involve a bulk of repetition by the survivors. But before that there is a lot of repetition. I think that the brief statement of facts would really help though.

For example, it is not wrong for the doctor who is doing the examination to ask the survivor 'so tell me what happened?' so they know where to look for evidence so if there is anal penetration they would look over there rather than vaginal penetration. But can that be reduced to a brief statement of facts, yes because the police already ask these questions so write down most basic things, where to look for evidence. And I pass it on to the doctor because when the police officer escort the client to the hospital they should be able to speak to the doctor. And wherever necessary then only the doctor can perhaps add questions and ask the survivor.

Female police officer Thailand.





Good practice : investigating for victimless prosecutions

Part of ensuring comprehensive investigations includes conducting investigation based on the assumption that some victims of violence may in the end not support the investigation or prosecution. ‘Victim-absent prosecution’, also known as evidence-based prosecution, means improving the quality of the evidence and of the documentation in order to dissociate the victim from the criminal proceedings. This can make it easier for victims to testify because they are no longer the only available evidence and it is therefore often no longer a case of his word against hers and the information supplied by the affected woman is supported by the evidence. For instance, in England and Wales, the Crown Prosecutors have victimless prosecution guidelines in their policy.²⁶⁰

5.3 Forensic issues



Good practice : standardised gender-sensitive forensic evidence protocol and forms

Good practice in forensics ensures that medico-legal examinations are arranged only when appropriate. This means setting out clearly whether forensic examinations are required and if so, they should be done in a timely and gender-sensitive manner that takes into account the unique needs and perspectives of the victim, respect her dignity and integrity, and minimise intrusion while abiding by standards for the collection of forensic evidence.

Forensic examination protocols need to appreciate their dual purpose (i.e. addressing the victim’s medical needs and addressing the justice system needs through forensic evidence collection) and endeavour to combine these seamlessly. It is possible to gather some physical evidence up to 72 hours after an assault and beyond if there has been physical assault and/or internal damage. A Singaporean NGO has advocated this be extended to 100 hours. Developments in DNA technology and other forensic science techniques are continually extending what is possible.²⁶¹



We are trying to work with forensic doctors to get information from them [about whether forensic evidence can still be found a week after the incident] and they said something similar that it should be possible to seek some evidence within a week. We haven’t proposed it yet because we are still working with the doctors to figure out what things are possible and even when you have a cold case then what do you search for them basically.

NGO staff member in Singapore.



²⁶⁰ England and Wales. The Crown Prosecution Service. <https://www.cps.gov.uk/publications/prosecution/domestic/index.html>.

²⁶¹ Department of Justice 2003, as cited in Kelly, L. 2005.

The dual functions also raise critical questions about the need to separate the information recorded as part of the forensic examination and that undertaken for health and medical screening purposes. This care is needed to ensure that information on, for example, contraceptive use is not used as a 'backdoor' route for the introduction of sexual history evidence at trial. There needs to be clear guidelines as to when body examination of the suspect, if identified, is conducted and how to conduct crime scene forensics where required – the collection of fingerprints, body fluids, footprints, etc. In the Philippines, there is a gender-sensitive forensic evidence protocol.²⁶²

Standardised rape kits

A number of countries in Southeast Asia use rape examination kits, which contain all the necessary resources for forensic examiners to conduct the examination, collect samples and record findings (on body charts, and in some cases, a report form).²⁶³ Such evidence moves the burden away from victim testimony, while also being capable of being used in support of her testimony. In the Philippines, given that all of the laboratories capable of analysing DNA evidence in sexual assault cases are located in Manila, making it difficult to test DNA samples collected outside of Manila within the 72-hour window, a research institute developed a prototype version of the Sexual Assault Investigation Kit (SAIK). According to the research team, 'work on the SAIK took many years because [the institute] opted to study the entire system, from sample collection, transport, handling and laboratory analysis before a prototype version was made available to non-governmental organisations and government agencies'.²⁶⁴ It is of critical importance to document external injuries (since they predict prosecution) and that protocols should be more complex, with different routes adapted to the facts of the case, e.g. is it a known offender, and is a consent defence likely.²⁶⁵

Box 50: The use of forensic nurse examiners

Jurisdictions such as the United States, United Kingdom and Canada have introduced forensic nurse examiners, who obtain specific training on handling sexual violence cases and have been at the forefront in integrating use of colposcopes. Forensic nurses are often cheaper than doctors and ensure the provision of 24/7 cover and the availability of female examiners. The positive benefits of forensic nursing include: access to a female examiner; availability, especially during daytime; expertise in forensic and sexual assault issues; improved evidence gathering; possible increase in prosecutions and convictions and number of daytime examinations conducted increased by nearly half.²⁶⁶

²⁶² Inter-Agency Council on Violence Against Women and Their Children (IACVAWC) website < <http://www.pcw.gov.ph/focus-areas/violence-against-women/initiatives/iacvawc> >

²⁶³ For instance, see Ministry of Health Malaysia. *Guidelines for the Hospital Management Child Abuse and Neglect*. 2009; Singapore, Sexual Assault Care Centre < <http://sacc.aware.org.sg/get-help/medical-attention/#rke> >;

²⁶⁴ University of the Philippines. *The DNA Analysis Kit: Helping Sex Crime Victims Find Justice*. March 29, 2017. <<https://www.up.edu.ph/index.php/the-dna-analysis-kit-helping-sex-crime-victims-find-justice/>>

²⁶⁵ Kelly, L. 2005.

²⁶⁶ Kelly, L. 2005.

Box 51: Good practices for forensic examination protocols²⁶⁷

An approach to forensic examinations which places the rights and dignity of the victim at the centre will ensure the following elements.



Victims are accorded priority in any triage system.



Injuries are immediately assessed and where necessary treated.



Facilities offer privacy and security.



Non-institutional setting (i.e. victims are to be seen in rooms that are comfortable).



Standard evidence kits, including early evidence kits (a mouth swab and bottle for urine sample) that can be used by any trained professional and mean that if there is a wait for an examiner, victims may drink / smoke / go to the toilet without contaminating evidence.



Support workers/advocates who explain the process/procedures.



Skilled examiners with a caring but professional manner and knowledgeable about sexual violence.



Female examiners.



Decreasing the need for victim to have to repeat the account (allowing the initial statement when the police, medical examiner and victim advocate are all present).

²⁶⁷ Elements taken from Kelly, L. and Regan, L. "Good Practice in Medical Responses to Recently Reported Rape, Especially Forensic Examinations". A Briefing paper for the Daphne Strengthening the Linkages Project. 2003; Raoul Wallenberg Institute.



Informed consent is sought at the outset, and for each procedure, providing as much control as possible to the victim throughout.



Provision for additional needs (such as interpretation or communication).



Facilities to wash, change clothes, have a drink and make phone calls after the examination.



Support workers/advocates who will debrief and, where necessary, develop a safety plan.

6. Pre-trial processes

Prosecutors control the doors to the courthouse in many of these Southeast Asian countries, often deciding who will be charged and with what crimes. At the very least, prosecutors decide whether the criminal case should be forwarded or not to the court for prosecution. In so doing, prosecutors review the lawfulness and propriety of investigations and the gathering of evidence in cases involving violence against women. Decisions to prosecute and the way the prosecution is handled will have an impact on the confidence of victims in the criminal justice system. The participation of victims is often crucial to the success of the prosecution as well as ensuring that the victim does not experience re-victimisation by the criminal justice process.

Box 52: Updated Model Strategies and Practical Measures

Article 15 urges Member States to:

- ❖ Ensure that the primary responsibility for initiating prosecution lies with the prosecution authorities and does not rest with the victim, regardless of the level or form of violence.
- ❖ Safety risks are taken into account in decisions concerning bail.

Article 16

- ❖ Promote specialised prosecution units or personnel.
- ❖ Make decisions on arrest, detention and terms of any form of release. Take into account the need for the safety of the victim and that such procedures prevent further acts of violence.
- ❖ Respond promptly to incidents of VAW, including by taking measures to ensure the fast and efficient management of cases.

Article 18

Provide victims with information about their roles in and opportunities for participating in criminal proceedings, and about the scheduling, progress and ultimate dispositions of the proceedings, as well as any orders against the offender.

6.1 Victim-centred prosecutions



Good practice : specialised prosecutors

Prosecutors who understand the dynamics of violence against women, both domestic violence and sexual violence, will be sensitive to the way they interact with the victims. Having specialised prosecutors assigned to handle these cases can contribute to the victims' experience of having prosecutors that are non-judgmental and supportive. They appreciate the dynamics of violence against women, which allows victims to have the opportunity for full participation and to be treated respectfully. Specialisation often means that the victim deals with the same prosecutor from beginning to end. They have the potential to challenge rape myths by taking on 'unprosecutable' cases. Such prosecutors take a more active role in building cases and maintaining contact with the complainant, and they are more likely to provide continuity of personnel. For instance, in Malaysia, the Attorney General Chambers has a domestic violence and sexual crimes unit. In the Philippines, the Anti-Violence against Women and Their Children Act sets out specific duties and responsibilities for the Department of Justice which includes designating and training special prosecutors who shall investigate and prosecute cases involving violence against women.²⁶⁸ Specialist dedicated prosecutors should be selected on the basis on their experience, interest, skills and levels of sensitisation, and they should undertake a thorough and comprehensive consultation with victims as soon as possible. In Singapore, the Criminal Justice Division of the Attorney General's Chambers (AGC) has a team of 15 experienced prosecutors dealing with High Court (non-capital) cases that usually involve serious sexual offences, including rape. This team is headed by two director-level prosecutors and assisted by four paralegals and a litigation support unit. They receive training on trauma-informed gender-based violence investigations and prosecutions from psychologists. This team of prosecutors has developed a close relationship with the police. The unit has developed its own guidelines. While these guidelines were not provided to the research team, it was noted that they are updated over time when there is a need to adopt a new practice in handling some offences. There is also a vulnerable witness room for case assessments and meeting with victims. The interviewed prosecutor (male) mentioned that there is a balanced number of men and women prosecutors in the team.



Good practice : victim assistance provided by prosecution office

A good practice recommendation is to establish multi-disciplinary teams within the prosecution offices, which are made up of prosecutors and social workers or victim advocates.²⁶⁹ Such teams can

²⁶⁸ Inter-Agency Council on Violence Against Women and Their Children (IACVAWC) website < <http://www.pcw.gov.ph/focus-areas/violence-against-women/initiatives/iacvawc> >

²⁶⁹ UNODC. *Blueprint for Action*. 2014.

contribute to making the victim feel that her report of violence is taken seriously and listened to, and that her complaint is regarded as credible and valid, all of which can prevent or reduce secondary victimization. For example, in Brunei Darussalam, the Attorney-General's Chambers has set up a victim response unit within the Criminal Justice Division, which aims to assist victims of crimes in understanding the criminal justice process for example by informing them of the current status of their cases.

Box 53: Understanding the reluctant victim²⁷⁰

Women who suffer violence, whether by intimate partners, male relatives or strangers, have high levels of non-cooperation. This is due to a number of reasons, such as they want to remain in the relationship; fear of retaliation; and economic reliance. The more that prosecution-related burdens are placed on victims, the less likely they are to cooperate. Research shows that the majority of victims of intimate partner violence support prosecution even if they express ambivalence in public; and among those who oppose prosecution, the majority reported that the court experience gave them a sense of control. Victims who are supported and treated in a respectful and compassionate manner and empowered by skilled professionals are less likely to withdraw from the criminal justice system. In addition, they also provide better evidence. Strategies to deal with a reluctant victim include early contact; support and information; understanding her reluctance and trying to address her concerns; protective measures available; use of an expert on gender-based violence at trial to explain reluctance; ensuring comprehensive collection of all relevant evidence and not relying solely on the victim's testimony. Non-cooperation of victims was reduced in sites with specialised prosecution programs, increased victim advocacy and specialized domestic violence courts.



Good practice : policies to deal with reluctant victims

A good practice recommendation is to develop policies to deal with reluctant victims that focus on reducing the barriers that place undue pressure on the victim to withdraw charges.²⁷¹ Prosecutors must appreciate and respond to the potential conflict between the goals of the criminal justice systems, and the wishes of the victim and giving substantial weight to the victim's views in criminal proceedings.²⁷² When making decisions to withdraw the prosecution in violence against women cases, prosecutors should do a risk assessment, decide on the basis of informed and educated suggestions and principles to act on the basis of a robust prosecutorial approach, which is not dependent on the explicitly expressed interests of the victim, but takes them into consideration.²⁷³ Caution is to be exercised when considering the diversion of cases of violence against women away from the formal criminal justice courts.

²⁷⁰ UNODC. "Handbook on Effective Prosecution Response to Violence against Women and Girls". 2014.

²⁷¹ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

²⁷² UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

²⁷³ England and Wales. The Crown Prosecution Service. <https://www.cps.gov.uk/publications/prosecution/domestic/index.html>.

Vertical prosecution policies

The use of vertical prosecution, which means assigning one prosecutor to work on a case from the initial screening through to case disposition, responds to the traditional complaint from victims of inconsistency in treatment and insensitive interactions with prosecutors. This allows victims to build a good rapport with the prosecutor and to feel more comfortable and experience less stress and more confidence in the criminal justice process. In Singapore, prosecutorial guidelines reflect the practice of having one prosecutor who follows the whole case. As one interviewee mentioned, *'before there was sometimes several prosecutors following the same case and it was confusing for the victim.'*

Box 54: Pro-prosecution policies²⁷⁴

A global recommendation is for states to adopt pro-prosecution policies. Pro-prosecution policies in cases of violence against women, where there is probable cause to believe that a crime has occurred, means that prosecution is likely but not mandatory. Pro-prosecution policies are in response to the traditional reluctance by prosecutors to pursue prosecution in these cases. Despite legal reforms and training, some prosecutors continue to believe that violence against women, particularly domestic violence, does not constitute a crime, or they do not institute a prosecution due to perceptions that the victims are not trustworthy or will not cooperate or due to difficulties in gathering evidence. It is important to stress that pro-prosecution policies differ from “mandatory” or “no drop” prosecution policies in the sense that pro-prosecution policies are more flexible and retain a level of agency of the victim, while ensuring that the issue is treated seriously by prosecutors and that stereotypical thinking in the exercise of prosecutorial discretion is not applied. Caution is needed in exercising these policies. If exercised too rigidly, these policies can sacrifice the safety and empowerment of individual women. Such policies need to be part of a coordinated response to violence against women.



Good practice : fast case management at the prosecutorial stage

Fast and efficient case management at the prosecutorial stage includes fast track procedures that can identify cases involving violence against women and prioritise them in court dockets, including bail hearings, committal hearings and for trial.²⁷⁵ Women victims should not be subjected to undue delays in applications for protection orders, and all cases of gender-based discrimination under criminal law, including violence, should be heard in a timely and impartial manner.²⁷⁶ This means reducing delay at all stages of the decision-making in the prosecution: limiting the number of case continuances/adjournments and allowing only reasonable delays, taking into account the impact on the victim.²⁷⁷

²⁷⁴ UN Women “Handbook for Legislation on Violence against Women” 2010.

²⁷⁵ UN Women, UNFPA, WHO, UNDP and UNODC “Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing”. 2015.

²⁷⁶ UN Committee on the Elimination of Discrimination against Women (CEDAW). “CEDAW General Recommendation No. 33: Women’s Access to Justice” 2015.

²⁷⁷ UN Women, UNFPA, WHO, UNDP and UNODC “Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing”. 2015.

Part of efficient case management for prosecutors is keeping victims informed about their case, about the scheduling, progress and ultimate dispositions of the proceedings, as well as about any orders against the offender.²⁷⁸ In Malaysia, the 2017 Domestic Violence Act bill includes provisions on recognition of the right to be informed at each stage. In addition, the Criminal Procedure Code revised in 2011 provides victims, after they have lodged a report, the right to get status updates on their case from the prosecutor (Section 107A). In the Philippines, the Anti-Violence against Women and Their Children Act includes in the duties of the prosecutor the obligation to inform the victim of her rights, including legal remedies available, of the procedure, and of privileges for indigent litigants (Section 29). The Act also calls for the Department of Justice, if necessary, to revise the Rules of the National Prosecution Service in order to ensure that cases of violence against women under the Act shall have priority over all other pending cases and to ensure appropriate and speedy disposition of such cases within forty-five (45) days.

6.2 Exercising prosecutorial discretion



Good practice : guidelines to exercise prosecutorial discretion

The primary responsibility for initiating prosecution is on the prosecutor and does not rest with the victim. The exercise of discretion to prosecute depends on a range of factors, such as an assessment of the merits of the case relative to the elements of possible criminal offences, the adequacy and quality of the evidence and perhaps the likelihood of conviction. The exercise of discretion over whether or not to prosecute is an onerous one, since the decision can have serious consequences for the suspect, the victim and the community. Guidelines or policies for prosecutors can set forth directives to promote prosecution in these cases. In deciding whether or not to prosecute, prosecutors should be encouraged to regard violence against women as a decisive factor or an aggravating factor.²⁷⁹ In considering the adequacy and quality of the evidence, prosecutors should regard all complaints as credible and valid unless the contrary is clearly indicated.²⁸⁰ This means not buying into gender myths and stereotypes when assessing evidence. For instance, in Singapore, prosecutors have a set of guidelines instructing them on the exercise of prosecutorial discretion in cases involving serious sexual offenders (which includes sexual offences against women).

Box 55: Elements of guidelines when exercising prosecutorial discretion²⁸¹

There are a number of elements that can be included in developing guidelines for exercising prosecutorial discretion:



Prosecution of gender-based violence is not dependent on an accusation by the victim.

²⁷⁸ Updated Model Strategies and Practical Measures, Article 18.

²⁷⁹ UNODC Blueprint for Action. 2014.

²⁸⁰ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

²⁸¹ International Centre for Criminal Law Reform and Criminal Justice Policy. 1999.



Policy of not making judgements based on the women's 'previous character'.



Not to discontinue cases if the only reason to do so is the reluctance of the complainant.



Allow for discontinuance of proceedings only after careful consideration of the office protocols for reviewing gender-based violence offences.



Drop charges only in exceptional circumstances, such as danger to the victim.



Record the reasons for dropping charges.

Regarding voluntary intoxication

Regarding the issue of voluntary intoxication, the international standards provide that voluntary intoxication should not exempt a perpetrator of violence against women from criminal responsibility.²⁸² In the Philippines, the Anti-Violence against Women and Their Children Act provides that being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defence under the Act (section 33).

7. Trial processes

Despite the fact that trials can be conducted quite differently depending on the jurisdiction, they are often traumatising events for the victims. In some jurisdictions, trials can be quite lengthy, requiring live testimony and cross-examination. Other jurisdictions allow for the sitting judge to read the case file in advance, which includes detailed notes of the investigating judge's investigation, such as interviews of witnesses. Even under the best circumstances, being interviewed, testifying or participating at trial can be an intimidating experience. Whether the judges are more like impartial referees between the prosecutor and defence or whether they play a more central role acting as an inquisitor, most victims will be unfamiliar with courts and trial proceedings and this unfamiliarity may raise feelings of anxiety and fear of the process. Judges and court staff need to be aware of how delays and protracted criminal proceedings impact victims. The Updated Model Strategies provides that the victim should be enabled to testify through adequate measures (protecting her privacy, identity and dignity) and be safe during the legal proceedings. The judiciary can ensure victim safety and hold perpetrators accountable in a

²⁸² Updated Model Strategies and Practical Measures, Article 15(f).

number of ways. The judiciary enforces and interprets existing laws. They are the fact finders and decision makers in the pre-trial stage, the trial stage and sentencing stage, as well as appellat stages.

Box 56: Updated Model Strategies and Practical Measures

Article 15 urges Member States to:

- ❖ Ensure that victims are enabled to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting the privacy, identity and dignity of the women
- ❖ Ensure safety during legal proceedings, and where safety cannot be guaranteed, refusing to testify should not constitute a criminal or other offence
- ❖ Avoid secondary victimisation in legal proceedings
- ❖ Ensure that evidentiary rules are non-discriminatory
- ❖ Ensure that all relevant evidence can be brought before the court
- ❖ Rules and principles of defence do not discriminate against women and 'honour' or 'provocation' cannot be invoked by perpetrators to escape criminal responsibility
- ❖ The credibility of a complainant in a sexual violence case is understood to be the same as that of a complainant in any other criminal proceeding
- ❖ Prohibit the introduction of the complainant's sexual history when it is unrelated to the case
- ❖ No adverse inference should be drawn solely from a delay in reporting
- ❖ Not to exempt perpetrators from criminal responsibility who are voluntarily under the influence of alcohol, drugs or other substances
- ❖ Can consider evidence of prior acts of violence, abuse, stalking and exploitation during court proceedings
- ❖ Claims of self-defence by women who experience battered women syndrome can be taken into account

Article 16

- ❖ Promote specialised courts, or dedicated court time

Article 17

- ❖ Provide adequate protection to victims before, during and after criminal proceedings

Article 18

- ❖ Provide an accessible and sensitive court mechanism and ensure fair and timely processing of cases
- ❖ Provide victims with court support and interpretation services
- ❖ Provide victims with access to qualified personnel who can provide victim advocacy and support services, such as independent support persons

7.1 Creating an enabling and friendly court environment



Good practice : special measures facilitating victim's testimony in court

There are a number of victim support measures that are designed to ease the victim's experience during the testimony. There are certain measures that can lessen the distress and trauma for the complainant during evidence giving, such as permitting the victim to testify in a manner that allows her to avoid seeing the accused, limiting the frequency, manner and length of questioning, permitting a support person such as family member or friend to attend trial with the victim, examination through an intermediary, and allowing a video-recorded interview as evidence in chief. Studies have shown a significant percentage of sexual offence victims said special measures enabled them to give evidence they would not otherwise have been able to give and that anxiety about the court experience fell significantly when special measures were used.²⁸³ The Women's Care Centre in Penang, Malaysia, held a national consultation on the rights of vulnerable witnesses in court, launching a report making a number of recommendations.²⁸⁴ The report noted that such as the Intimidated Witnesses Act 1970 and the Witness Protection Act 2006 establish good practices but need to be used more effectively. In Singapore, the Code of Practice for the Conduct of Criminal Proceedings provides that 'extra care and sensitivity should be taken where the witnesses are young, and / or have been adversely affected or traumatized by the relevant offences' (Section 19). Singapore has also established a vulnerable witness support programme.

Protections giving evidence

There are a number of ways to protect the victim when giving evidence, including through the use of screens, closed circuit television systems and/or one-way mirrors. In Thailand, special rooms are available in the newly constructed courts in some provinces, and work is now underway to establish special rooms in all courts across Thailand. These 'special rooms' refer to rooms that are equipped with two-way mirrors to prevent the defendant from seeing the witness.²⁸⁵ In Malaysia, the Criminal Procedure Code allows for special measures for vulnerable witnesses (section 272B). The law does not define who are 'vulnerable victims', and civil society has been advocating for understanding this concept to cover more than only children, and for training on this issue.²⁸⁶

Allowing for a support person

Having a support person in court includes the right to be accompanied and represented in court by a specialised complainant's service or intermediary, free of charge and without prejudice to their cases. This includes receiving guidance and assistance in navigating the criminal justice system. In Singapore, the Witness Support Programme offers to vulnerable victims the support of a Volunteer Support Person (VSP).²⁸⁷ If the judge allows, on application by the prosecutor, the VSP can sit behind the victim when testifying, either in open court or in video-linked witness room.

283 Kelly, L. 2005.

284 Women Centre for Change (WCC) Penang. "National Consultation on 'The Rights of Vulnerable Witnesses in Court'". 2017.

285 Thailand Ministry of Foreign Affairs. *Thailand's Progress Report on Anti-Human Trafficking Efforts*. 2015. <http://www.mfa.go.th/main/contents/files/media-center-20150430-161606-980768.pdf><http://www.mfa.go.th/main/contents/files/media-center-20150430-161606-980768.pdf>

286 Women Centre for Change (WCC) Penang. 2017.

287 State Court, Criminal Justice Division. "Witness Support Programme" pamphlet. <www.statecourts.gov.sg>

Using intermediaries

Intermediaries can enable vulnerable victims give complete, coherent and accurate evidence in court. Intermediaries are allowed to explain the questions or answers so far is necessary to enable them to be understood by the victim as witness or the questioner without changing the substance of the evidence. In Thailand, in human trafficking cases, the court is to allow witnesses, especially women and children, to testify without having to face the defendant directly or question the witness through a psychologist or social worker, in accordance with relevant regulations.²⁸⁸



[L]et's say she is really in fear, based on our assessment like she doesn't think that she could feel secure or if she is fearful of even going [to court], a couple of things that we can do is we can link up with the court ... and talk about how do we want or hope for her to be supported in court. The court would make whatever arrangement that would be helpful. ... They may place this person in another room or arrange for them only to be called at a certain time so we leave it to them and they would kind of discuss what would be the best way. This is the same thing that we do with the Sharia court as well. ... In a PPO situation where they are so afraid, we have a video-link mention here done here at [our office] so they don't have to travel over there and also if let's say the court trial situation, if they can accompany to the court room, so that is when there is a programme in court I think it is called the "friends in litigation" or something like that so these are really friends, I think they are volunteers, and I think that they are friends who would be there, provide moral support and hold their hands for example so that they are not as fearful or anxious, emotional etc.

NGO staff members from Singapore.



Good practice : special measures protecting the privacy, identity and dignity of the victim

There are a number of special measures that courts can put in place in order to protect the privacy, identity and dignity of the women victims. The processes for application should be widely known by the criminal justice professionals as well as the victims and easily applied for.

Confidentiality measures

Confidentiality measures are designed to protect the identity of the victim from the media and the public (such as a ban on publication, removing any identifying information such as names and addresses from the public records of the court, using a pseudonym for the victim, permitting victims to testify behind screens or closed hearing). In Indonesia, in cases of sexual violence, the victim can

²⁸⁸ Thailand Ministry of Foreign Affairs. *Thailand's Progress Report on Anti-Human Trafficking Efforts*. 2015.

request closed hearings. An interviewee mentioned that the courts can redact (i.e. remove the information from publication) any personal information on the victim from the court transcripts. In Brunei Darussalam, the Women and Girls Protection Act provides that any court proceedings in relation to offences committed under that Act may be held in camera and where the female victim is under the age of 16 years, the proceedings must be held in camera. Further, any newspaper report of such proceedings is prohibited from publishing any pictures, revealing the name, address or any particulars which tend to lead to the identification of any woman or girl, in respect of whom the offence is alleged to have been committed. In the Philippines, under section 63 of the Anti-Violence against Women and Their Children Act, confidentiality is provided to the victim throughout the investigation, prosecution and trial of an offence. Court personnel shall not disclose the names and personal circumstances of the victim or complainants or any other information tending to establish their identities to the media or the public or compromise her identity.



Good practice : specialised courts

Specialised courts can ensure that the court's infrastructure responds to the victim's needs, for example by creating separate waiting space for victims and offenders, and by making available video-linked equipment, in order to avoid or reduce contact with the defendant. The court administrative staff should have a special unit to coordinate support for victims throughout the trial. This also means assigning a specialised judge to hear the case. Such courts concentrate similar cases in a specific court. This allows for experienced judges to handle these complex cases as well as frees up other courts and so speeds up proceedings. Specialised courts allow for the development of legal and judicial expertise through specialisation, aim to increase convictions and enhance procedural justice; allow for more focus on marginalised or problematic types of cases; allow for continuity of court personnel and greater administrative efficiency; and promote greater coordination with support services.²⁸⁹ A specialised court system or specialised court proceedings can be created along with specialised training for officials assigned to these courts. Specialised courts often have tools (e.g. model bench books) which provide relevant case law within a social context analysis of violence against women. They also often have multidisciplinary officers attached to the court, such as prosecutors, court staff, psychologists and victim support persons. Specialised courts need to be adequately equipped and judges and staff systematically trained, and guidelines and protocols should be issued that are gender-sensitive and protect the rights and safety of the victim.

Box 57: Malaysian scholars call for the introduction of a Domestic Violence Court²⁹⁰

A number of professors have called for the introduction of Domestic Violence Courts in Malaysia as a 'one stop centre' to deal with domestic violence prosecutions as well as all matters incidental thereto, such as applications for protection orders, powers of arrest, application for compensation for injuries and financial losses and application for referral to a conciliatory body. These courts will address the unique nature of domestic violence which involves not only criminal behaviour, but also complex social relationships. They set out what considerations should be made when establishing these courts.

²⁸⁹ Kelly, Liz. 2005.

²⁹⁰ Nazli Mahdzir, Aspalella A Rahman Asmar Abd Rahim and Che Thalbi Ismail. "Domestic Violence Court: A New Model to Combat Domestic Violence Against Women in Malaysia". 2014. Universiti Utara Malaysia.

- ❖ Specialised staff: there needs to be specially trained court staff and non-court professionals, including judges and courts officers trained in family and criminal law, as well as victim advocates who understand the emotional and material needs of victims.
- ❖ Permanent judge for specific cases: Assigning a single permanent judge to handle domestic violence cases throughout the proceeding helps to ensure consistency and quick disposal of the case.
- ❖ Safety: the court setting must be able to provide a sense of safety to the victim, e.g. by providing private spaces and CCTV for testimony.
- ❖ The victim should have immediate access to the Legal Counsel and Victim Advocate Service: they can provide safety planning, access to counselling and other services in order to ensure that the victim can be self-sufficient throughout the court process and after the trial has ended.
- ❖ Immediacy: rapid case management so that the perpetrator can be brought to trial in the shortest possible period of time.
- ❖ Intensive monitoring: the court must establish a network with the law enforcement agency and other court room players in order to conduct rigorous monitoring of perpetrators and victims.
- ❖ Effective Communication: Network or linkages between the court, law enforcement agency and other court room players.
- ❖ Keep victims informed: of all case processes.

Specialised criminal courts

In Thailand, the Thonburi Criminal Court is seen as a positive example. It provides facilities such as separate waiting rooms and entrances, and private rooms to conduct interviews; female interpreters are available and there are appropriate mechanisms for women to give testimony.

Unified family courts

Intimate partner violence can result in multiple actions being taken across both civil and criminal courts. For example, a perpetrator may be charged with both breaching a restraining order and committing an assault.²⁹¹ Having one judge deal with all matters relating to domestic violence, both criminal and family law issues, is efficient and can speed up proceedings as well as free up two different courts dealing with the same parties but different legal aspects. It can also increase victim safety and offender accountability. There are also the Central Family and Juvenile Court of Thailand where standard operating procedures are being developed for the protection of female victims and offenders. The Philippines has unified Family Courts that have jurisdiction over both criminal and civil (family law) matters in cases of violence against women and their children. The Family Courts have staff who are social workers and counsellors.

²⁹¹ UN Women. *Virtual Knowledge Centre on Ending Violence against Women and Girls*.



Good practice : designated and trained judges

All judges should be trained on the nature and implications of gender-based violence. A good practice is to have specialised judges who can be designated in adjudication of these kinds of cases.

7.2 Evidentiary rules - non-discriminatory and gender-sensitive



Good practice : gender-sensitive criminal procedures and evidentiary rules

The rules of evidence and criminal procedure should not discriminate against women. Examples of such discrimination might be in the weight given to the testimony of women as compared to men, or in allowing restricted evidentiary rules that disproportionately apply to female victims of violence. Court procedures and evidentiary rules can be designed to alleviate the special difficulties faced by women in court processes. The Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia was developed in June 2016.²⁹² This Declaration aims to provide assistance for judges in the understanding and application of gender equality and non-discrimination principles.

Bar evidence on the victim's sexual history and reputation

Judges should not allow the introduction of the complainant's sexual history at trial when it is unrelated to the case. Allowing such evidence of the victim's past sexual history with partners other than the accused feeds into the myth that she is more likely to consent to intercourse or is a 'loose woman' whose testimony would have less veracity. A few jurisdictions prohibit evidence of sexual reputation and limit evidence of sexual history to a very narrow range of circumstances. 'Rape shield laws' have been introduced which limits the introduction of such evidence to instances where, in the discretion of the judge, it is considered unfair to the defendant to do otherwise and sets out strict guidance on the type of evidence that can be introduced in trials for rape and sexual assaults. In Thailand, the Criminal Procedure Code provides that in cases of a sexual offence, the accused is prohibited from adducing evidence or raising in cross-examination a question concerning the sexual behaviour of the victim with other persons excluding the accused person, unless it is permitted by the Court according to an application (section 226/40). The application is to be permitted only in cases where the court considers it as being just in trying and adjudicating the case. In Malaysia, the Evidence Act was amended in 1989 to prohibit questions being posed to a rape victim about her sexual history in court unless in specific circumstances, such as the need by the defence to rebut evidence of the victim's sexual activity or absence that was previously adduced by the prosecution (Section 146A).

No adverse inference for delayed reporting

Not to draw any adverse inference solely from a delay of any length between the alleged commission of an offence and the reporting thereof.

²⁹² *The Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia*. 2016. <<https://www.icj.org/wp-content/uploads/2016/09/Southeast-Asia-Bangkok-Guidance-Advocacy-2016-ENG.pdf>>

8. Sentencing and corrections

The international standards call for the recognition of the serious nature of violence against women and the need for sentences that are commensurate with that seriousness.

Box 58: Updated Model Strategies and Practical Measures

Article 15 urges Member States to:

- ❖ Ensure that safety risks are taken into account in decisions concerning non-custodial or quasi-custodial sentences, conditional release, parole or probation.

Article 17

- ❖ Sentencing policies and procedures should recognise the serious nature of VAW and be commensurate with that seriousness.
- ❖ Sentencing policies and procedures should: hold offenders accountable for their acts; denounce and deter VAW; stop violent behaviour; promote victim and community safety; take into account the impact of victims and their family; provide sanctions that ensure that the perpetrators of violence against women are sentenced in a manner commensurate with the severity of the offence; provide reparations for harm caused; and promote the rehabilitation of perpetrator.
- ❖ Consider as aggravating factors for example repeated violent acts, abuse of a position of trust or authority, violence against a spouse or a person in a close relationship, and the victim is under 18 years of age.
- ❖ Ensure the right of a victim to be notified of the offender's release from detention or imprisonment.
- ❖ Take into account in the sentencing process the severity of the physical and psychological harm and the impact of victimisation, including through victim impact statements.
- ❖ Have a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence and to rehabilitate the perpetrator, as appropriate.
- ❖ Develop and evaluate treatment and reintegration / rehabilitation programmes for perpetrators that prioritise the safety of the victim.
- ❖ Ensure that judicial and correctional authorities monitor compliance with any treatment ordered.

Article 18

- ❖ Ensure access to prompt and fair redress, including the right to seek restitution from the offender or compensation from the State.

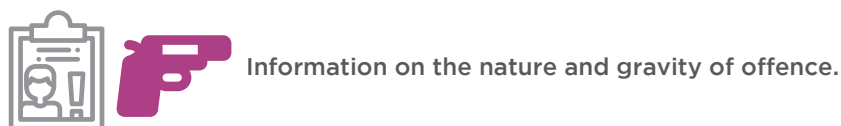
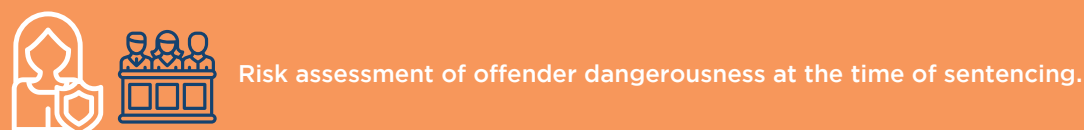
8.1 Sentencing hearing practices

Good practice : sentencing guidelines

Conducting sentencing hearings can ensure that all relevant information is before the court, which contributes to consistent and commensurate sentencing. One practice that responds to the problems of low punishment rates for violence against women cases is to have sentencing guidelines that call for thorough, standardised, consistent sentencing of perpetrators in order to ensure that other efforts to protect victims are not significantly undermined. Following the Updated Model Strategies provisions, sentencing guidelines should denounce and deter violence against women, stop violent behaviour, promote victim and community safety, provide reparation for harm caused as a result of the violence, and promote rehabilitation of the offender.²⁹³ Such guidelines should clearly list the aggravating factors for sentencing purposes, including repeated violent acts, violence against an intimate partner, or the offender had previously been convicted of offences of a similar nature. It is useful for the authorities to have checklists for the types of relevant information that should be considered for sentencing hearing. There are some common considerations in violence against women cases that could be contained in sentencing checklists, such as the appropriateness of considering fines, since they may negatively impact victims, as well as the issues of restitution, reparations and compensation.

Box 59: Elements for a sentencing hearing checklist²⁹⁴

Relevant information to present at a sentencing hearing includes:



²⁹³ Updated Model Strategies and Practical Measures, article 17(a). See also UN Women. Handbook for Legislation on Violence against Women. 2012. p. 49.

²⁹⁴ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.



Previous efforts at rehabilitation.



Defendant's character.



Current rehabilitation needs.



Any aggravating factors.



Good practice : enable the participation of victims at sentencing hearings

Providing the opportunity for victims to tell the court the physical and psychological harm and the impact of victimisation at the sentencing hearing allows for the victim to explain to the court the harm she has suffered.²⁹⁵ The victim's participation could be through a broad range of methods that suit the individual needs of the victims. For example, the victim could provide a written or oral victim impact statement, or the victim impact reports could be done by experts such as social workers. In Malaysia, the Criminal Procedure Code (Amendment) Act 2012, amending section 173 provides for the introduction of the victim impact statement. This means that when the accused is convicted, the victim can choose to come forward to give an oral statement before the court determines the sentence. Singapore also allows for victim impact statements to be submitted during the sentencing hearing (section 228 of the Criminal Procedure Code).



Good practice : broad range of sentencing options available

Concerns have been expressed about the limited sentencing options, especially in domestic violence cases, with imprisonment appearing to be the most common form of punishment for all forms of violence against women in Southeast Asia.²⁹⁶ To address these concerns, judges should have a broad range of sentencing options available to them. Studies have shown that judges should consider more intrusive dispositions (incarceration, work release, electronic monitoring and conditioned probation) rather than less intrusive sentences of fines or suspended sentences without probation.²⁹⁷ The studies also urge that caution should be exercised when sentencing 'first' offenders of violence against women to conditional discharges, as while this might be the offender's first conviction it might not be the first incident of violence against the victim. In Thailand, the Domestic Violence Victim Protection

²⁹⁵ Updated Model Strategies and Practical Measures, Article 17.

²⁹⁶ Due Diligence Regional Report.

²⁹⁷ UNODC "Handbook on Effective Prosecution Response to Violence against Women and Girls". 2014.

Act provides for a wide range of sentencing options for a person who is found guilty of domestic violence (article 12). The Court has the power to impose measure for rehabilitation, treatment or probation on that person or to order that person to pay financial assistance, to perform community service, to refrain from doing an act which may give rise to domestic violence or to be on parole in accordance with the procedure and period specified by the Court in lieu of sentencing. However, this also raises concerns that this court is limited in imposing a more severe penalty in domestic violence cases and therefore continues to see domestic violence as minor crime

Being careful in imposing fines

In domestic violence cases in which the offender maintains a continuing obligation to pay child support or alimony or the victim and her children continue to live with the offender, and the victim believes that a fine would negatively impact her ability to support herself and her children, the judge should carefully consider whether fine disposition is appropriate.²⁹⁸ When fines are imposed, they should be combined with treatment and supervision of the perpetrator through probation.²⁹⁹

Rehabilitation programmes

As part of the sentence in many jurisdictions, the judiciary can consider whether the offender should undergo a treatment or rehabilitation programme. Simply removing a perpetrator from a situation does not ameliorate the real issue of re-victimisation, whether it is victimising the same victim or finding someone new to victimise. An important aspect of sentencing is to focus on the changing of the behaviour of the perpetrator through rehabilitation which seeks to prevent him from repeating his violent behaviour. Courts should order such programmes in strict circumstance, including requiring court supervision and court sanction if offenders do not satisfactorily complete the programme. Such an order should be part of a conviction rather than an alternative to a sentence that would be entered into the criminal record.



Good practice : strict conditions on diversion from the criminal justice system

In Thailand, where the Domestic Violence Victim Protection Act allows for settlement of the case and withdrawal of the complaint, the Act allows the police inquiry official or the Court to arrange a preliminary arrangement prior to the settlement, where measures can be imposed as a condition for compliance with the settlement. If the perpetrator fails to comply with the conditions, the inquiry official or the Court shall have the power to continue the litigation.



Good practice : range of options for receiving restitution and compensation

Women need access to prompt and fair redress, including the right to seek restitution from the offender or compensation from the state.³⁰⁰ Restitution and financial compensation for harms done

²⁹⁸ UN Women, *Handbook for Legislation on Violence against Women*. 2012, p. 50; UNODC. *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women*. 2014, p. 85.

²⁹⁹ UN Women. *Handbook for Legislation on Violence against Women*. 2012, p. 50.

³⁰⁰ *Updated Model Strategies and Practical Measures*, Article 18.

to the victim should be prioritised ahead of fines and penalties and should not preclude the victim from pursuing civil or other remedies. They should not be used as a substitute for custodial sentences. The calculation of the harm to the victim and the costs incurred as a result of the violence should be defined as expansively as possible and aim to be transformative rather than simply returning the victim to the position in which she was prior to the violence, but also redressing inequalities that made her vulnerable to violence.

Box 60: Considerations when assessing physical and psychological harm or damage³⁰¹

Consider when assessing physical and psychological harm or damage



The loss of reputation or dignity, pain and suffering and emotional distress, loss of enjoyment of life,



The lost opportunities including employment, pension, education and social benefits, including loss of earning potential.



Damages that take full account of the victim's unremunerated domestic and caring activities.



Damages that take full account of the situation of the girl victim, including costs of social and educational recovery/reintegration.



Expenses for legal, medical, psychological and social services.



Actual costs of seeking justice and other services as a result of or related to the experiences of violence, including transportation.

Restitution is considered part of sentencing

In Thailand, the Criminal Procedure Code allows for the victim to file a motion to the Court trying the criminal case for compensation from the accused (section 44/1). In the Philippines, the

³⁰¹ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 3 Justice and Policing". 2015.

Anti-Violence against Women and Their Children Act allows for any victim of violence under the Act to be entitled to actual, compensatory, moral and exemplary damages. The civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed (Section 35).

State-funded compensation

Assets seized from convicted offenders, particularly in cases of human trafficking, can be put towards victim compensation funds.³⁰² Reparations can be 'compensatory, restitutionary, rehabilitative and/or symbolic in nature and can be individual or collective, monetary or non-monetary'.³⁰³

8.2 Rehabilitation and treatment programmes

An increasing number of States have developed intervention or behaviour change programmes. As previously noted, courts may mandate, as part of sentencing, that a perpetrator attend such a programme in addition to other penalties, including imprisonment or probation. Such programmes can be offered by prisons, probation offices or community organization. In some States, also the police can refer perpetrators to such programmes on a voluntary basis when responding to incidents of violence against women in addition to such actions such as assigning protection orders and referring victims to services. This might not involve a criminal charge or conviction. Whichever way the perpetrator comes to rehabilitation treatment centre programmes, there are a number of good practices with respect to developing such programmes. Evaluations of intervention programmes for perpetrators have shown mixed results. Service providers for victims have emphasised that they should be considered and delivered only as part of an integrated response to violence against women. Where limited funding is available, services for victims should be prioritised over programmes for perpetrators. The service providers also argue that such programmes should be used only following an assessment to ensure that there will be no risk to the safety of the victim.



Good practice : gender-sensitive rehabilitation treatment programmes

Rehabilitation treatment programmes should be committed to working within a gendered structural analysis of violence against women as opposed to a simplistic or individualised anger management paradigm and accredited with an organization that supports victim feedback as to whether the violence continues. Victim safety should be the priority in any such programme. This means consulting the victims at the time the assessment is done when the options for rehabilitation are being considered as well as in connection with on-going risk assessments and informing the victims of all post-trial decisions. It is considered a good practice that rehabilitation is part of a conviction rather than an alternative to a sanction that is entered into the criminal record, and that there is supervision of rehabilitation programmes. Furthermore, there needs to be appropriate consequences for perpetrators who do not satisfactorily complete their programmes.

302 OSCE. 2009.

303 OSCE. 2009.

Box 61: Minimum standards for any intervention programme³⁰⁴

Consider when assessing physical and psychological harm or damage



Adequate funding.



Trained staff to ensure timely monitoring and immediate enforcement.



Accredited with an organisation that supports victim feedback as to whether the violence continues.



Committed to working within a gendered structural analysis of violence against women as opposed to a simplistic or individualised anger management paradigm.



Commitment not to engage in any relationship or mediation.



Undertaking an appropriate suitability assessment of perpetrators prior to acceptance in the programme.



On-going risk assessment with the safety of victim the priority.



Good practice : programmes where perpetrators takes responsibility for their actions

While there is agreement that programmes that work with perpetrators of violence against women are a good practice, there are different models and discussions behind such programmes.³⁰⁵ Some models view such programmes as 'treatment', while others see them as 'education' or 'training'. Such programmes recognise that violent men are in need of support, often in the form of counselling, as such men may suffer from low self-esteem, anger management issues and problems with forming

³⁰⁴ UN Women. *Handbook for National Action Plans on Violence against Women*. 2012.

³⁰⁵ OSCE. 2009.

interpersonal relationships. There is also research that shows a close correlation between men who are abusive and those who experienced violence in childhood. However, such an understanding should never be used as an excuse for violence. An important element of good practice is that programmes should require the perpetrator to take personal responsibility for his actions. Developing and implementing such programmes in close coordination with services to survivors and addressing and questioning notions of masculinity ensure that perpetrators take responsibility for their actions and are positive agents of change.³⁰⁶

In the Philippines the Anti-Violence against Women and Their Children Act provides for counselling and treatment of offenders (section 41). The national government, in partnership with non-governmental organisations and local government units, is to develop policies and procedures regarding the delivery of rehabilitation services to perpetrators of violence, train service providers who are implementing such programmes, and establish a system of accreditation of counsellors and rehabilitation programmes. Specifically, perpetrators who were issued protection orders by the Barangay or the courts shall be subjected to mandatory rehabilitative counselling and treatment. They also can be referred to these programmes by the Women and Children Protection Desks of the Philippine National Police, local government units, NGOs and community-based groups. In Singapore, the Mandatory Counselling Programme (MCP) aims to rehabilitate the perpetrators and to support and protect victims and their children from violence. Where the judge orders the perpetrator to undergo mandatory counselling, the social workers who provide the counselling are university trained. Counselling sessions cover topics such as anger and conflict management, communication skills, and understanding the cycle of violence, and perpetrators are encouraged to take personal responsibility for their own actions. With mandatory counselling, victims are also empowered as they learn how to formulate safety plans for themselves and their children. In Indonesia, '[S]ome non-governmental organisations and crisis centres also run voluntary programmes to help offenders address the underlying issues, for example Rifka Annisa, a women's crisis centre in Indonesia, set up a programme for men in 2007 to provide counselling and anger management.'³⁰⁷

³⁰⁶ OSCE. 2009.

³⁰⁷ Thomas Reuters Foundation. *A Landscape Analysis of Domestic Violence Laws*. 2013. p 8.

PART III:
FIVE
KEY ELEMENTS
FOR
GOOD PRACTICES
IN SOUTHEAST ASIA



PART III: FIVE KEY ELEMENTS FOR GOOD PRACTICES IN SOUTHEAST ASIA

This part explores five key elements found in many of the good practices existing in Southeast Asia and moves the discussion of good practices beyond the specific focus of the criminal justice chain. Many of these key elements are reflected in the guiding principles of the Updated Model Strategies and Practical Measures, that urge states when introducing model strategies and practical measures to be guided by the need to ensure a comprehensive, coordinated, systematic and sustained approach that promotes the involvement and participation of all relevant sectors of government and civil society and other stakeholders. These guiding principles also speak to committing adequate and sustained resources for model strategies and practical measures that take into account the varying needs of women subjected to violence and to develop monitoring mechanisms to ensure effective implementation and oversight. The selection of practices from Southeast Asian that are described in this part are used to illustrate some of the functional features of each element, but does not necessarily mean that the practices perfectly reflect the element. It was beyond the scope of this research to do in-depth assessments of the practices described.

1. Element One: Practices supported by comprehensive legal and policy frameworks

A supportive comprehensive legal and policy framework is an important element for the effective implementation of many of the good practices discussed in Part II. Such a framework sets the legal and judicial basis for ensuring a gender-responsive criminal justice system.

1.1 A comprehensive legal framework on violence against women

Violence against women is a complex phenomenon requiring a holistic, multi-sectoral response that is best supported by a comprehensive national legal framework. Laws provide the legal and judicial basis for women to claim their right to justice, health and social services and provide a remedy for them when these rights are violated. Laws are critical to states assuming accountability for violence against women and providing the legal basis for ensuring survivors' human rights and states' obligations of due diligence. Legislative provisions should cover substantive, procedural and operational provisions, criminalization, prevention, protection, support and rights of survivors, investigation, prosecution and sentencing, issues in relation to civil lawsuits, family law and asylum law. While the manner in which this type of violence is defined is a starting point to ensuring effective criminal justice responses and was discussed in section 1 of Part II, mere criminalization of violence against women is not enough. Legislation must also provide an effective legal framework to prevent, respond and address the root causes of such violence.³⁰⁸ A comprehensive legal framework should harmonise criminal and civil law (such as family law and labour

³⁰⁸ UNODC. *Blueprint for Action*. 2014.

law) and recognise that the complex and unique nature of violence against women often requires a response that includes a combination of civil and criminal remedies. Furthermore, a comprehensive legal framework on violence against women should be supported by laws which provide for gender equality in marriage, divorce, property rights and child custody.

A review of the legal frameworks in Southeast Asia reflects a number of common features of a national comprehensive legal framework on violence against women. These features are summarised in the UN Essential Services, Module 6: Implementation Guide.³⁰⁹

Feature Laws are guided by the principles of a human rights-based and women-centred approach and ensuring offender accountability

While state accountability for eliminating violence against women is often anchored in constitutional guarantees on non-discrimination, equality before the law and broader gender equality provisions, a good practice is to have an explicit prohibition of violence against women contained in the constitution.

The example of Thailand

The Constitution of the Kingdom of Thailand, B.E. 2550 (2007) provides that women must be accorded protection with regard to appropriate trials and afforded the right to proper treatment in cases related to sexual violence (section 40(6)) and that the State must protect women against violence and unfair treatment and must afford them the right to receive rehabilitation in the event of such circumstances (section 52).³¹⁰

Feature Laws promote the principles of gender equality

Another feature is the promotion and integration of the principles of gender equality, non-discrimination and women's empowerment in all laws. This can be done via a women's charter of rights.

The Philippine's approach

The Magna Carta of Women is a comprehensive women's human rights law that guarantees substantive rights and seeks to eliminate discrimination through the official recognition, protection, fulfilment and promotion of rights for Filipino women. It mandates the State to take steps to review, amend or repeal existing laws that are discriminatory towards women. It has been deemed a landmark initiative in Southeast Asia.

Feature Cover all forms of violence against women, all legal domains (criminal, civil, family administrative) and all required services (policing, justice, health, social services)

States in Southeast Asia have taken different routes to ensuring a comprehensive legal framework for the response to violence against women. One route has been to develop dedicated and specific laws that are comprehensive codes to address violence against women through a combination of legal domains, often

³⁰⁹ UN Women, UNFPA, WHO, UNDP and UNODC "Essential Services Package for Women and Girls Subjected to Violence: Core Elements and Quality Guidelines, Module 6 Implementation Guide". 2016.

³¹⁰ International Commission of Jurists and Justice for Peace Foundation. 2012.

using different definitions depending on the legal domain. An example of a dedicated and specific law on intimate partner violence is the Philippines Anti-Violence against Women and Their Children law which defines which acts of violence against women are considered crimes and which acts are considered violence against women that attract women's rights to protection, mandatory services and entitlements in order to facilitate their healing, recovery and social reintegration. Another approach is the development of an integrated framework law to address specific elements such as protection and including specifications of context for which to apply other general law. For example, the Malaysian Domestic Violence Act does not include penalisation but relies instead on existing criminal offences in the Penal Code. However, it includes a provision on the specification of context as aggravating circumstances within general law.

What is generally considered a good approach is to have a broad and dedicated framework law which can set out specific legal provisions on all forms of violence against women, as well as refer to general laws already in place. It has been argued that adopting specific laws is necessary for the development of a legal understanding of the problem so that it can be addressed by the proper agencies and be included in national statistics.³¹¹ Such laws can increase attention to a problem that is not well known. In such a framework law, there can be a specific provision which provides that the specific framework legislation will take precedence. Regardless of whether forms of violence are addressed in separate legislation or in one piece of legislation, the comprehensive legal framework must be applicable to each form of violence and cover all essential elements: prevention, protection and support of victims, punishment of the perpetrator, and measures for implementation, evaluation and monitoring of the law.

The example of the Philippines

In the Philippines, the Commission on Women has developed a Women's Priority Legislative Agenda with a number of recommendations, all aimed at eliminating discriminatory provisions in existing laws and strengthening protection of women's human rights, including strengthening of the provisions of the Anti-Rape Law; eliminating discrimination against women in the Revised Penal Code and decriminalising adultery and concubinage; strengthening law enforcement and protection against sexual offences; enacting the anti-prostitution law; and amending the Penal Code to decriminalise prostitution. There are plans to conduct joint forums in order to study the possibility of formulating a comprehensive Anti-Violence against Women law, since currently the national law on violence against women focuses on intimate partner violence.

Myanmar's plans

In Myanmar, a law drafting committee with government officials and supported by the United Nations has developed a draft Prevention and Protection of Violence against Women Law. Once enacted, this will be the first comprehensive elimination of violence against women law in Southeast Asia, as it proposes to supersede the Penal Code that has very limited, outdated and discriminatory provisions on women. The draft law covers domestic violence, including marital rape and battered women's syndrome; sexual violence, including rape, sexual harassment, sexual assault, sexual abuse, aggravated sexual violence, and technology-related violence; harmful traditional practices; procedural protections; civil and criminal remedies; socio-economic services; public awareness; capacity building for public officials; monitoring; and budget allocations. This is the first comprehensive law in the region that covers all forms of violence, and is anchored in prevention, protection, prosecution and punishment.

Box 62: Dedicated stand-alone law versus a piecemeal approach

The international standards do not specifically dictate the best legislative approach to addressing violence against women. The decision to have a dedicated, specific and comprehensive law or to revise and develop various related laws in a piecemeal approach is left to the discretion of each State. This is likely due to the reality that States have different legal traditions and different ways of articulating legislative provisions which cover substantive, procedural and operational provisions, such as through primary laws and/or subsidiary laws and in policies, operational directives or guidelines. However, it is clear from expert group meetings and UN handbooks that States are encouraged to draft comprehensive legislative frameworks. This means that whatever legislative approach is taken by a State, the legal framework as a whole must provide the foundation for a holistic, comprehensive and effective approach to addressing violence against women. The legal framework needs to be multidisciplinary, criminalising all forms of violence against women and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological) as well as adequate punishment of perpetrators and the availability of remedies for survivors.

Feature Law reform processes that promote a broad consultation with all relevant stakeholders

There are different kinds of review mechanisms established in States, such as permanent review boards within legislative and administrative bodies; national machinery on gender equality issues; structures independent of government which are empowered to review laws, such as law reform commissions; or mixed bodies comprised of government and non-government agencies tasked with reviewing and evaluating certain laws. Whatever the review mechanism, states should consult women's groups and civil society organisations which have been advocating for women's rights and changes to laws and practices. In addition, in some Southeast Asian countries, civil society organisations have taken the lead in pushing for law reform.

Malaysian's active civil society

In Malaysia, a Joint Action Group for Gender Equality (JAG) which is made up of twelve civil society organisations, including the Women's Aid Organisation, Women Centre for Change, the Association of Women Lawyers, Justice for Sister, and Sisters in Islam, to name a few, advocated for the establishment of a Chambers-led Working Committee to review the laws on violence against women. The relevant government ministries, the Bar Council, the office of the attorney generals of Sabah and Sarawak as well as the Joint Action Group for Gender Equality (JAG) are members of the working committee. This committee was notable for its work in reviewing the Domestic Violence Act 1994, the Penal Code, the Criminal Procedure Code (CPC) and the Evidence Act 1950; and working on the possibility of a stand-alone law on sexual harassment.³¹² The 2017 bill is a result of collaboration between various stakeholders. JAG worked with the Ministry of Women, Family, and Community Development, the Women's Parliamentary Caucus, and the Attorney General's Chambers on these amendments since the end of 2013. Other stakeholders contributed, including the Bar Council Malaysia and the National Council of Women's Organisations.

³¹² Malaysian Bar, 2014.

The experience of Cambodia

After some reported inconsistencies, vague terminology and issues with implementation, the government of Cambodia, with the support of the United Nations, decided to review the Law on the Prevention of Domestic Violence and the Protection of Victims. A consultative review involved key stakeholders, such as various government ministries and civil society organisations, to identify challenges in the implementation of the law and gaps in its alignment with international standards and commitments.

Feature Evidence-based research to inform law reform
In reviewing and reforming laws, states should be informed by evidence, backed up by regular collection and analysis of data.

Malaysian active NGOs

The Women's Aid Organisation has conducted and published a number of studies, including the 2015 publication, "Working Together: Case Studies in Domestic Violence Response," which they have used in evidence-based lobbying efforts to call for stronger laws and policies to protect against domestic violence.

Viet Nam government research

The Ministry of Justice in Viet Nam has been involved in a number of studies, supported by the United Nations, in order to support evidence-informed legal reform. A number of studies were conducted in connection with work on amendments to the Penal Code and Criminal Procedure Code, including research on attrition in the criminal justice system in sexual violence cases, and a review of international standards and promising practices on criminal offences, criminal procedure and evidentiary rules that deal with gender-based violence. There has also been research on law enforcement practices and legal support to female victims of domestic violence, conducted in 2011.

1.2 A comprehensive policy framework on violence against women

Developing a comprehensive policy framework can be a critical part of effective and timely implementation of legislation and ensure standardised quality of delivery by each sector, including the criminal justice sector, and their interactions with each other. Policies can set the direction for governments and their agencies in their efforts to change the way and manner in which they have responded to the various forms of violence against women.

Feature National, high-level, multi-sectoral policies on violence against women

In Southeast Asia, a number of countries have high-level multi-sectoral policies at the national level. These might be plans of action to advance women's rights more broadly, or plan of actions specifically to respond to violence against women at a national level. While these National Action Plans do not create enforceable laws, they are formally adopted strategies that serve as a framework for government action. Action plans can

describe the functions of various ministries and agencies, set indicators, describe preventive activities, develop training programs, set up protection services and delineate the responsible agencies, which can include both governmental and non-governmental organisations and allocate funds from the State budget.³¹³

The example of Thailand

While there have been government policies on violence against women since the establishment in 1999 of the One Stop Crisis Centre in government hospitals, and its hotlines, number 1300, the Cabinet approved the National Policy and Plan to Eradicate Violence against Women and Children in 2000.

Feature Inter-agency policies on violence against women

These types of policies involve measures that integrate sectoral and coordination policies into one document. They can be applicable to various levels, national or more community-level policies. Criminal justice agencies partner with non-justice institutions, such as health, education and social services as well as civil society organisations to establish a holistic response to violence against women. These policies often highlight the sharing of information among the various stakeholders, including provisions on privacy and confidentiality requirements; disclosure of information for the purpose for which it was obtained or compiled or for a use consistent with that purpose; and informed consent from the victim for disclosure.

The example of Malaysia

In Malaysia, the Ministry of Family issued guidelines for the handling of domestic violence cases, the Garis Panduan, which has flow charts and sets out the overall role of actors, including social welfare officers and the police. A non-governmental organisation assisted in the development of these inter-agency guidelines.

Feature Criminal justice institutional policies on violence against women

Internal policies, codes of conducts and standard operating procedures can regulate the response of a particular criminal justice agency. Having written policies, protocols and directives is seen as a good method to translate legal protections into concrete responses. Policies can assist criminal justice providers in preventing, identifying and dealing with different manifestations of violence against women and support women victims in a manner that is gender-sensitive and responsive to their needs, covering technical issues as well as reflecting broad attitudinal and behaviour approaches. Policies should be supplemented with resource material and be disseminated widely to all criminal justice officials. In addition, specific training and adequate resources are required for implementation. The policies should be published and disseminated to the public. They should be transparent and be in easily accessible language for victims, in order to promote accountability and the empowerment of victims. Criminal justice agencies should have a policy as to how to engage in crime prevention and how they should engage with a wide range of stakeholders such as communities, religious and community leaders, civil society and women's organisations, men, boys, young people, the media and the private sector.

³¹³ OSCE. 2009.

The example of the Philippines

The Philippine Commission on Women is planning an assessment of all departments and the modification of a programme for them to adopt to ensure gender mainstreaming, as required under the Magna Carta of Women. This also provides for adequate and sustained funding that is necessary for the implementation of laws on violence against women, with reference being made of training, establishing services, and data collection.

The example of Supreme Court posters in the Philippines

Codes of conduct for criminal justice agencies set standards of personal and professional conduct while on and off duty. For example, they often prohibit all forms of discrimination on the basis of sex. According to the OSCE, codes of conduct have proven highly valuable in cases where legislation is lacking, for example on the issue of sexual harassment in the workplace. Although codes of conduct are not legally binding, they can have a significant influence on employers and improve workplace policies and procedures. In the Philippines, a justice of the Supreme Court noted that the law on sexual harassment requires that the courts set up a Committee on decorum and investigation (CODI). '[W]e have here a CODI where employees can file complaints involving sexual harassment within the office. The appellate court also each have their own CODI and in the trial courts, there are also CODIs, usually under the executive judge. The Supreme Court issued a circular identifying who are the members of the CODI. And my Committee on gender responsiveness has already prepared posters in each court on how to complain to file a complaint with the CODI.' [Interview with Philippine judge].

2. Element Two: Practices that promote coordinated and multi-sector responses

Violence against women cannot be addressed by the criminal justice system alone. It has become accepted wisdom that a coordinated multi-sector response to gender-based violence is a foundational element in preventing gender-based violence and addressing the persistent impunity.³¹⁴ The cornerstone of a coordinated approach to violence against women is that no single sector can effectively combat it in isolation, and therefore coordinated responses strive to be multi-disciplinary and include all relevant essential services from the public and private sectors (the police, prosecutors, judiciary, health, education and social welfare). The aim of the coordinated response model is first and foremost to increase victim safety and perpetrator accountability by coordinating core services in the criminal justice, victim and survivor support and health sectors.³¹⁵ Coordination has to happen at various levels and amongst different agencies and sectors. On a broader scale, a coordinated response should involve the police and justice sector, as well as the health and social services sector. There also needs to be coordination within the criminal justice sector in order to ensure that the police, prosecution, courts and legal aid work together in a coordinated manner to ensure an effective criminal justice response to violence against women.

³¹⁴ OSCE. 2009.

³¹⁵ UN Women Virtual Knowledge Centre.

2.1 Coordination mechanisms and referral pathways

Feature Coordinated community response mechanisms

Coordinated community responses can set transparent standards and expectations from each agency, and aid in communications and linkages between the different criminal justice agencies and service providers at the community level. A coordination mechanism helps set a shared understanding of how to respond to violence against women. That means a victim, as she proceeds through the criminal justice system, will be met with the same understanding of her rights and her situation and receive the same high-quality response from all criminal justice officials and service providers. Coordination can take many forms. Some are highly structured and formal and involve representatives from all relevant agencies and groups. Others may have specifically defined goals, be more informal and involve fewer agency representative. One of the best known and earliest examples of a coordinated community response that has been modified and replicated in other parts of the globe is the Duluth model, an intervention strategy developed by the Domestic Abuse Intervention Project in Duluth, Minnesota.³¹⁶ A key feature is that it requires all sectors involved to agree to core principles of intervention that make victim protection a paramount concern.

Box 63: Critical elements for coordinated community response mechanisms³¹⁷



Shared philosophical framework on violence against women.



An understanding of each agency's roles.



A plan to improve the response of different agencies.



Development of an overall protocol or local action plan agreed to by all agencies (usually through MOUs or agreements).



Established modes of communication and sharing of information amongst agencies.

³¹⁶ OSCE. 2009.

³¹⁷ UNODC. *Blueprint for Action*. 2014.

Singapore National Family Violence Networking System

In Singapore, in line with the multi-stakeholder approach, a key platform at the policy level for the management of family violence known as the Family Violence Dialogue Group was established in 2001. The Dialogue Group is jointly headed by the Ministry of Social and Family Development (MSF) and the Singapore Police Force, and comprises the courts, the prisons, the Ministry of Health, the Ministry of Education, Chairpersons of Regional Family Violence Working Groups, the National Council of Social Service, and social service agencies. It is a strategic development and planning policy group established to enhance provisions and services for families affected by violence through facilitating work processes amongst the agencies, coordinating public education efforts and developing new areas for collaboration on family violence. At the operational level, the National Family Violence Networking System (NFVNS) was established in 1996 to put a close network of support and assistance in place. The island-wide NFVNS provides multiple access points for victims to obtain help. This system links the Singapore Police Force, prisons, hospitals, Family Service Centres (FSCs), courts and the MSF for closer collaboration and networking. For instance, the Singapore Police Force carries out investigations, refers families to FSCs for counselling and support, advises victims to seek medical attention and to consider applying for a Personal Protection Order. A Personal Protection Order is an order issued by the Court which protects the victim against family violence. The FSCs provide victims and perpetrators with counselling and casework support, while the hospitals provide physical, psychological or psychiatric treatment for victims. Since 2003, six Regional Family Violence Working Groups, led by non-governmental organisations, have been set up to harness community energy to spearhead and plan joint regional activities to raise awareness on family violence, examine new trends at the local level, and seek new ways to help families affected by violence. The Working Groups include hospitals, the Singapore Police Force, crisis shelters, social service agencies, and FSCs. These Working Groups also serve as a channel for providing feedback to the Dialogue Group on gaps in the provision of services for families affected by violence. Since their formation, the Working Groups have enhanced efforts in raising awareness, providing inter-agency training and initiating projects to better serve their clients and the community. The MSF and the SPF co-organise the National Family Violence Networking Symposium annually to strengthen partnerships between agencies and use the symposium platform to learn and share best practices in policy, practice and research dealing with family violence.

The Philippine Inter-Agency Council

The Inter-Agency Council on Violence against Women and their Children (IAC-VAWC) was established pursuant to section 39 of the Anti-Violence against Women and their Children Act. IACVAWC is composed of different sectoral government departments, including the Department of Justice, the Philippine National Police and the National Bureau of Investigation (along with social welfare and development, the human rights commission, the women's commission, the welfare of children, health, education, labour, etc). This Inter-agency is mandated to formulate programs and projects to eliminate violence against women based on their mandates, develop capability programmes for their employees to become more sensitive to the needs of their clients as well as serve as the monitoring body as regards violence against women initiatives. This Council was established to: a) ensure the effective implementation of the law; and b) be the lead coordinator and monitoring body on

violence against women initiatives. They are also to ensure the participation of NGOs working on this issue to effectively implement the Act in whatever forms appropriate. The IACVAWC developed performance standards in 2000 for each service provider as well as established a referral system.

Feature Referral pathways and inter-agency guidelines

Another approach to coordination is to put in place measures aimed to facilitate inter-agency cooperation to provide victims with a seamless response to their cases. Inter-agency guidelines can promote consistent and timely referrals between criminal justice agencies and victim services, plus other services to benefit the victims. Referral pathways and networks work best if they can be met through co-locating services or referral networks facilitated by an advocate.

Malaysia inter-agency guidelines

The Malaysian inter-agency guidelines that focus on domestic violence cover interdepartmental and inter-sectoral working committees, the development of MOUs, and systems for the regular exchange of information and referral pathways. Clear mechanisms must be put into place to coordinate activities and ensure clear lines of communication and decision-making.

Philippine's Referral System on Violence against Women

Guidelines have been issued in the Philippines on the Establishment and Management of a Referral System on Violence against Women at the Local Government Unit Level (Philippine Commission on Women & Inter Agency Council on Violence Against Women and Their Children, 2009).

Singapore's Inter-agency platforms

The Inter-agency platform, the Family Violence Dialogue Group, established in 2001, is seen as key for the management of family violence in Singapore. The Group is headed jointly by the Ministry of Community Development, Youth and Sports (MCYS) and the Singapore Police Force. The Dialogue Group comprises the courts, the prisons, the Ministry of Health, the Ministry of Education, the National Council of Social Service, and social service agencies such as the Society Against Family Violence. The Dialogue Group facilitates work processes amongst the agencies, coordinates public education efforts and develops new ideas for collaboration on family violence. In 2003, six Regional Family Violence Working Groups, led by non-government organisations, were set up to harness community energy to spearhead regional activities, examine new trends at the grassroots level, and seek new ways to help families affected by violence. The Chairpersons of the Working Groups are appointed as members of the Dialogue Group to provide feedback to the Dialogue Group on gaps in services. The Singapore Police Force continues to conduct regular dialogues and consultations with social workers based in social service agencies. These dialogues, aimed at improving joint working processes and providing coordinated assistance to family violence victims, have resulted in joint public education efforts in the community and increased rapport between police officers and social workers.

2.2 Coordination structures

Coordination structures vary from country to country in Southeast Asia. One important factor that determines which models might work is how legal and administrative structures are organised in different contexts. This can influence where coordination structures are located, such as hospital-based centres, police-based centres or stand-alone centres, and the legal and policy frameworks they will employ.³¹⁸ Another factor that determines the appropriate coordination model is where the principal impetus for changes to the responses to violence against women comes. It may be driven by NGOs or certain state agencies, come from the national level or from the grassroots community level.

Feature One Stop Models

The one-stop model has been established in parts of Southeast Asia, including the Philippines and Thailand, following early piloting in Malaysia, and is increasingly being adopted in other Southeast Asian countries, with exploration in Viet Nam. Cambodia has conducted a feasibility study which indicated that the context did not support the one stop model,³¹⁹ and there has been an evaluation of the Malaysian One Stop Crisis Centres. The one-stop model is devised to have as many services for victim and survivors of violence against women in one location as possible, designing the process to flow around the victim at the centre. The models vary in terms of which services are provided at the location and which services are referred from that one point. Whether the services are provided at the location or the victim is referred to other services from that location, the models usually look to provide comprehensive and multidisciplinary services and support, such as health care services, medico-legal services, social services, crisis management, counselling and psychological support, legal aid, referral services, safety planning, the police, and prosecutor services. One-stop models are designed to reduce the number of institutions a victim must visit and to coordinate the assistance process in one institution. Such centres also result in more effective work by the law enforcement structure as they have access to the victim for the purpose of evidence gathering, but the victim herself is in a safe and supportive environment, making it more likely she will co-operate with the justice system. More common in Southeast Asia are a range of health care-based models, in which multidisciplinary teams provide forensic examination, investigation and various forms of victim and survivor support and advocacy. One Stop Crisis Centres (OSCCs) that are hospital-based provide integrated care, where psychological, health and sexual health needs are addressed holistically, supported by personnel trained to be compassionate to women's suffering and sensitive to the need to change gender power relations. Often OSCCs have an explicit empowerment objective - to provide women-centred / gender-sensitive services to survivors of violence against women in order to help them heal physically and psychologically and equip them to negotiate the changing of the unequal power in their relationship with men and stop the violence.

Box 64: Benefits of one-stop centres³²⁰

The benefits of one-stop centres, which provide for a number of services for survivors located in one place with other services facilitated with referrals, include:

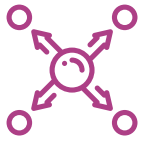
³¹⁸ UN Women. Virtual Knowledge Centre.

³¹⁹ In Cambodia where there are no One Stop centres, DANA NGO which responded to the survey noted that there was research indicating that One Stop centres would not be productive in Cambodia, but the NGO had not seen the study.

³²⁰ UN Women. Virtual Knowledge Centre.



Enhanced ability of the survivor to access a wide range of services.



Reduces bureaucracy and duplication.



Increases safety for victim.



Increases gender sensitivity in the response (treatment with dignity and sensitivity).



Reduces or minimises the potential for secondary victimization by the system.



Better collection of high-quality evidence (e.g. prompt forensic examination, specialised facilities for the collection, documentation and preservation of evidence).



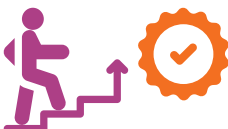
Increases likelihood of successful investigation and prosecution.



Provides a more professional, timely and supportive response to victims.



Better in effectively achieving victim safety and offender accountability.³²¹



Increase the chances of success in criminal cases should the victim decide to pursue it.



Better response to broad range of victim's needs (psychological needs, shelter, child-related, etc).

321 UN Women. Virtual Knowledge Centre.

Malaysia's hospital-based OSCCs

The first OSCC was established at the emergency department of the Kuala Lumpur General Hospital in 1994. It is a model of hospital-based services for violence against women that is built upon the concept of integrated and coordinated teamwork of a multi-sectoral and inter-agency network. Network members comprise the legal aid bureau, the judiciary and law department, the religious department, the social welfare department, women's organisations, the Ministry of Health and an intra-hospital team comprising paediatrics, forensics, obstetrics and gynaecology, emergency and trauma, psychiatry and other departments. As a Government institutional response model, it is unique in its provision of clinical therapeutic response and secondary preventive measures in handling the dynamics of domestic violence and sexual violence. Considered an enriched programme where services are patient-focused and are converged around the survivors, it aims to serve the survivors of violence in identification and diagnosis; therapeutic and medical care; para-counselling and emotional support; multi-level crisis interventions; legal and court activities; provision of temporary shelter; and medical reporting. Its management strategies include the formation of a working committee with representatives from various agencies to collectively address the best means to assist survivors and strengthen the role of individual agencies. A standard operating procedure known as Crisis Intervention Levels or Critical Pathways has been drawn up as a guide to indicate clearly the roles and responsibilities of each agency and department involved from the moment they are approached by survivors of violence. Of the 114 hospitals nationwide, 108 now have OSCCs. An analysis of the Malaysian One-Stop Crisis Centre model indicates that the level of existing health infrastructure, and the human and financial resources needed, may make the one-stop model challenging to implement in low-income countries, where addressing violence through hospitals and health clinics (i.e. primary care responses) may be more suitable.³²²

Thailand OSCC

In Thailand, an OSCC initiative established in 1999 under the coordination of the Ministry of Public Health is now located at all provincial hospitals and almost all district hospitals. Another type of OSCC was launched in 2013 to reinforce the continuing efforts to respond to and prevent violence against women, after Thailand joined UN Women's newest global initiative COMMIT. It is administered by the Ministry of Social Development and Human Security and includes 22,222 crisis centres around the country in 2013 and 1300 mobile units to access communities, raise public awareness and proactively lead interventions in communities where complaints have been received. The mobile OSCCs receive complaints, transfer cases and coordinate responses between government agencies. They provide immediate social assistance to women subjected to gender-based violence. The mobile OSCCs will be fully computerised and able to track specific cases or survivors' rehabilitation programmes. A database is being developed that will provide a snapshot of the true extent of the reporting of violence and the demand for social assistance as well as collect information on the OSCCs in order to ensure improvements in their responsiveness and effectiveness.

³²² Colombini et al., 2011.

Indonesia's Integrated Services Centres

Circular (No. 659 of 2007) establishes Integrated Services Centres in hospitals and victim's services in community health centres (Pukesmas).³²³ These centres are part of the implementation of a policy of the Ministry of Women to offer Integrated Services with a set of minimum service standards that must be given to women and children who are victims of violence.

Feature Victim centres with extensive networking

Another approach to establishing coordinated structures is to have victim centres that can coordinate with different services and sectors through memoranda of understanding, referral pathways or information exchange protocols. Often these centres promote partnerships with civil society organisations, such as victim advocacy groups.

Singapore's Family and Juvenile Justice Centre (FJJC)

The Family and Juvenile Justice Centre (FJJC) was set up in March 2002 to provide counselling services and to conduct programmes for individuals and families. The Centre is run by professionals from various disciplines (social workers, psychologists, counsellors and interpreter-mediators) in the areas of marriage, divorce, family violence, substance abuse, violence elimination and youth care. In addition, it has a one-stop service centre, the Family Transformation and Protection Unit (FTPU), that provides specialised services and assistance to victims of family violence. Through the "Many Helping Hands" approach which provides a comprehensive and holistic network of service, the government of Singapore 'seeks to nurture a violence-free environment for families – an environment that is safe, stable and supportive.' In 2006 Singapore's efforts in tackling family violence were documented in the publication "Protecting Families from Violence: The Singapore Experience". It marks the 10th year of Singapore's accession to the Convention on the Elimination of All Forms of Discrimination against Women and the establishment of the National Family Violence Networking System.³²⁴

Box 65: Reasons why coordination is a good practice

Coordination principles reflect many of the criteria used to define 'good practice'

Human rights based

A human rights-based response is enhanced as coordination often provides a more professional, timely and supportive response to victims. Coordinated response usually ensure that each provider has a shared and common understanding of the dynamics of violence against women as a human right violation and creates an environment that is dedicated and supportive to ensure the women's rights are respected and that the victim is treated with dignity.

³²³ Due Diligence Regional Report.

³²⁴ The 2007 edition of the publication is available at http://app.mcys.gov.sg/web/serv_reports_faml.asp.

Victim-centred approach	<p>Coordinated responses place victims at the centre of the various institutional interventions and are designed to revolve around the victim's needs. This increases her safety and provides for a better response to the broad range of the victim's multiple needs.</p> <p>Communication among agencies and safe, appropriate information sharing therefore, can not only deliver more comprehensive support to victims and survivors, but can also increase protection and save women's lives. Furthermore, because coordination and information sharing between agencies is enhanced, this can reduce the number of times the victim has to repeat her story to different professionals and therefore reduces secondary victimisation.</p>
Offender accountability	<p>Offender accountability is enhanced where there is a greater capacity to ensure a more consistent response by the criminal justice providers through clarity about roles and responsibilities. Coordination can mean that fewer cases will slip through the cracks which can happen when agencies work in 'silos'. Coordinated responses can result in higher quality of evidence collection and increase the chances of success in criminal cases.</p>
Oversight and accountability	<p>Oversight and accountability are enhanced in coordination where there are minimum standards that all partners and stakeholders have agreed to, and data is collected and shared in order to track the progress and impact of the response. Shared protocols with clear and transparent communication and accountability mechanisms can help create a more consistent response as well as hold each sector responsible for their response to violence against women.</p>
Resources and sustainability	<p>Often coordination can mean greater impact and reach at a lower cost through the pooling of financial and human resources.³²⁵ Cost benefits can be achieved through reductions in duplication of efforts.</p>

3. Element Three: Specialisation and capacity building

Building the capacity of all criminal justice providers to apply the laws of their states in an appropriate and gender-sensitive manner and using specialised expertise at various stages of the criminal justice system have been recognised as good practices towards a gender-responsive criminal justice system.³²⁶ As such these practices respond to the long history of inadequate response to gender-based violence cases by criminal justice agencies. This is due, in part to, insensitive, harsh or indifferent treatment by criminal justice providers. To counter the negative gender stereotyping that often inhibits women from reporting and participating in the criminal justice system, having them be in contact with providers who appreciate the dynamics of gender-based violence and know of the victim's multiple needs can contribute to developing a victim-centred criminal justice system and holding perpetrators accountable.

³²⁵ UN Women. *Virtual Knowledge Centre*.

³²⁶ *Updated Model Strategies and Practical Measures; CEDAW General Recommendation No. 33*.

3.1 Specialisation within criminal justice agencies

Specialisation within law enforcement, penal and prosecution systems can take on many forms. It can be specialised units within police or prosecution offices, multidisciplinary teams, or designated officers who have the required experience, skill and level of sensitisation. Specialisation could also involve a more integrated approach such as having the police linked to specialised prosecution units and courts or as part of one-stop models or approaches. Specialisation should be seen as complementary to, and not as a replacement for, an appropriate response from all criminal justice providers. All police, prosecutors and judges should receive regular and institutional training.

Feature Recruiting specialists

Specialists should be identified and recruited based on legal knowledge and skill and commitment to responding to violence against women. They should also have certain attitudes and personal and psychological skills to deal with these crimes. They should be sensitive, passionate and empathetic regarding gender-based violence. They also need to be exposed to regular training and debriefing. These specialists should be remunerated as specialists.³²⁷

Feature Increasing the role of women officers as specialists

The discriminatory attitudes of police personnel can prevent equal access to police services. According to the UN Special Rapporteur on Violence against Women, in country after country, women report that the police are insensitive and may fail to adequately investigate gender-based crimes. 'Some women have reported that when they went to the police to report a rape, male officers would make light of it, even asking whether they enjoyed the experience.'³²⁸ In order to provide victims with the possibility of speaking to a female officer if she so chooses, criminal justice agencies should strategically increase the percentage of female officers in criminal justice agencies. The Special Rapporteur on Violence against Women looked at the benefits provided by increasing the representation of female police officers. One is that women are more likely to report gender-based violence to a female police officer. The presence of a trained woman during the investigation procedure can ensure police institutions and culture that are non-discriminatory and that promote human rights. However, it should be noted that the inclusion of women does not automatically result in a more non-discriminatory criminal justice organisation. The internal culture of disrespect and harassment sometimes results in individual officers assimilating the dominant culture in order to protect themselves in the workplace. Female police officers have been known to act tougher on female victims of crime in an attempt to gain acceptance into the dominant group.³²⁹ Increasing the role of women officers as specialists needs to address the challenges associated with organisational culture, and work towards a criminal justice service that respects colleagues and the population served.

The Philippines strategy of increasing women police officers

The Magna Carta of Women, section 9, frames the strategy of increasing the recruitment and training of women in the police force, forensics and medico-legal, legal services, and social work services over the next five years, until 50% of the staff in these organisations are women, as a strategy that protects women from violence. This is seen as giving priority to the defence and protection of women against gender-based offences and helping women attain justice and healing.

Box 66: External studies on specialised women-only police stations³³⁰

Some of the findings of external studies conducted since the institutionalisation of specialised women-only police units in some countries such as India, the United Kingdom and Sierra Leone show increased number of reports being received, higher conviction rates and reduced rates of repeat victimisation. Although women police stations (WPS) constitute one approach to dealing with gender-based violence, training and skills development for addressing gender-based violence issues continue to be a requirement throughout the police, due to the high level of incidents and the diversity of cases involved.

There are a number of challenges and risks that need to be taken into account:

- ❖ WPS that are separate from the central police structure can lead to further marginalisation of sexual violence and victim support services.
- ❖ WPS that are not sufficiently linked to the judiciary may be unable to ensure that all women who decide to press charges see their cases go to trial.
- ❖ Statistics focus on tracking complaints that have been lodged and not necessarily on what outcomes are reached or on other forms of VAW.
- ❖ WPS are separate from the rest of the police, often with minimal specialized procedures, leading to varying means of addressing complaints or dealing with various issues, even within a given station or national police structure.
- ❖ Without clear policies or procedures, there is limited training for officers who staff such units.
- ❖ WPS office training has assumed that ‘being a good listener’ and the ability to handle GBV cases come naturally to women, resulting in inadequate training.

Box 67: Reasons why specialisation is a good practice

Whatever the structure of specialisation, the main purpose of specialisation makes it a good practice.

Human rights based	Appreciating that long delays in justice increases secondary victimisation, specialisation often includes expedited measures (fast tracking) which improves the general efficiency in case management and the victim’s right to access justice.
Victim-centred approach	Specialisation which involves continuity of criminal justice providers lessens the need for the victim to retell her statement. There is often increase communication with the victim throughout the process and coordination of risk assessment and support. All of this improves the experience for victims and better ensures the victim’s safety.

327 UNODC. *Blueprint for Action*. 2014.

328 UNIFEM. *Not a Minute More: Ending Violence against Women*. 2003, , 46.

329 Osse, A. *Understanding Police: A Resource for Human Rights Activists*. 2006. Amnesty International Nederland: Amsterdam. P. 91.

330 Denham, Tara. *Police Reform and Gender* 2008. DCAF.

Offender accountability	Specialisation usually involves continuity of the police, prosecutors and judges working on the file, focused on case building and evidence gathering and coordination with other criminal justice officials which increase the likelihood of successful apprehension, prosecution and conviction.
Coordination	There is often coordination and information sharing with other justice sectors, health sectors, victim support and assistance groups.

3.2 Capacity building - training of all criminal justice providers

Having strong laws, gender-sensitive policies, and a coordinated and specialised infrastructure to respond to violence against women is good, but not sufficient. Criminal justice providers who are responsible for proper and consistent implementation of the legal and policy frameworks need to receive proper training. Specialisation should not take away the need to train all police and other criminal justice providers in how to handle cases of violence against women. Specialisation may be restricted to urban or larger areas and might not be the first contact for all victims. Capacity-building that improves the functions of criminal justice professionals, such as the police and judges, also serves as an important preventive measure. When these professionals are given the skills to recognise early signs of violence, they can respond in a timely and appropriate manner in order to prevent escalation.

Box 68: Features of effective training³³¹ Gender issues should be mainstreamed into all



Mandate specific, regular and relevant training by law.



Training is integrated institutionally, supported by protocols and guidelines.



Promote multidisciplinary training amongst criminal justice providers. This kind of training can contribute to building trust amongst the different criminal justice agencies and enhance coordination.



Develop training in close cooperation with women’s rights organisations and civil society. This kind of training can contribute to building trust between the community and the criminal justice system.



Establish an evaluation mechanism to measure the impact of training.

331 UNODC. *Blueprint for Action*. 2014.



Have specialised training for specialised units and general training for all criminal justice providers.



Training should cover a broad range of topics on violence against women.

relevant training areas and training should also include in-depth modules on gender-related issues.³³² There is a need to challenge the attitudes and behaviours within criminal justice agencies that foster violence against women. This includes gender mainstreaming in institutional policies, regulations, protocols and guidelines to ensure that the operations of the criminal justice agency promote gender equality and mainstream gender. All recruitment, training and training material should be reviewed to ensure that it does not contribute to the myth-making cycle.³³³

Feature Mandatory regular training

Trainings and capacity-building programs are most effective when they are mandated in law and provided regularly and systematically. There are a number of effective training programmes in Southeast Asia.

The Philippines mandatory training

The Magna Carta of Women, section 9, provides that all government personnel involved in the protection and defence of women against gender-based violence shall undergo mandatory training on human rights and gender sensitivity pursuant to the Act. The Family Court judges received mandatory training at the Philippine Judicial Academy (PHILJA) in handling cases involving women and children, specifically the handling of battered women and abused children as well as the trafficked women and children. *'So we were trained by PHILJA, and the training may be suggested by this committee on gender responsiveness of the judiciary. And in fact we have an ongoing roll-out of gender sensitivity training among all judges, officers and employees of the judiciary in the entire mission.'* [Interview with Philippine judge].

Indonesia's regular training at the Supreme Court Training Centre

UN Women contributed to engendering women's human rights law into judicial systems through its technical assistance and series of capacity building to judges in the Supreme Court Training Centre. The training aims to establish a pool of specialists in women's access to justice among judges in the Supreme Court.

Singapore specialised and basic training

Specialised Sexual Crimes Branch officers undergo a two-week course where they learn interview and victim care management techniques in order to ensure that victims of sexual crime are not further traumatised in the investigation process. *Trainings for the*

³³² From Denham, Tara.

³³³ UNODC. *Blueprint for Action*. 2014.

officers on sexual crime courses, we get it from the police psychologist unit, trauma, techniques of investigation, how to deal with sexual crimes victims sexual crimes course that they have to attend [Interview with Singapore police]. The Basic Prosecutor's Course, conducted at least biennially, is mandatory for all prosecutors in the Attorney General's Chambers. It includes training in the interview of vulnerable witnesses, such as victims of rape and sexual abuse.

Feature Close cooperation with women's groups

Trainings and capacity-building programmes are most effective when they are developed in close collaboration with non-governmental organisations with expert knowledge of the contemporary nature and dynamics of domestic violence, including specific issues in relation to vulnerable communities in a particular country. In Indonesia and Malaysia, civil society organisations have been involved in the training of criminal justice providers.

The police training on domestic violence in Viet Nam

In Viet Nam, training for the police on domestic violence has been part of basic training at the police academy. Such training is also provided in professional development workshops that are jointly held with representatives from the Viet Nam Women's Union. It is critical that these courses become part of a routine system of education in order to reach both those entering the profession and those who are already practicing.

Malaysia's WCC collaboration with the Judicial and Legal Training Institute

The WCC has developed one module in the training curriculum for the Judicial and Legal Training Institute regarding training judges on handling sexual offences. They have also designed a module on domestic violence

Feature Broad coverage of topics

Training topics should include the relevant laws, incorporating knowledge of violence against women as a gender-based crime, addressing any stereotypes held by the specific group of criminal justice officials and providing officials with a greater understanding of the victim's experiences and needs. Trainings could also incorporate international, regional and domestic content on human rights principles, standards and jurisprudence and mechanisms. The training should focus on the causes, nature and extent of violence, challenging the myths surrounding it, understanding its effects on survivors, understanding the needs of survivors, victim experiences in courts. The training should also focus on the legislation itself.

Box 69: CEDAW General Recommendation No. 33 (Paragraph 29(c) – €)

Paragraphs 29(c) – (e) of CEDAW General Recommendation No. 33 provide that capacity-building programmes address, in particular:

(c)(i) The issue of the credibility and weight given to women’s voices, arguments and testimonies, as parties and witnesses;

(c)(ii) The inflexible standards often developed by judges and prosecutors on what they consider as appropriate behaviour for women;

(d) Consider promoting a dialogue on the negative impact of stereotyping and gender bias in the justice system and the need for improved justice outcomes for women who are survivors and survivors of violence;

(e) Raise awareness of the negative impact of stereotyping and gender bias and encourage advocacy to address stereotyping and gender bias in justice systems, especially in gender-based violence cases.

Philippines’s Anti-Violence against Women and Their Children Act (section 62)

In the Philippines, all agencies involved in responding to violence against women and their children cases are required to undergo education and training to acquaint them with:

- a) the nature, extent and causes of violence against women and their children;
- b) the legal rights of, and remedies available to, victim-survivors of violence against women and their children;
- c) the services and facilities available to victim-survivors;
- d) the legal duties of police officers in the arrest of perpetrators and protection and assistance to victim-survivors; and
- e) techniques for handling incidents of violence against women and their children that minimise the likelihood of injury to the officer and promote the safety of the victim-survivor.

The Philippine National Police, in coordination with local government units, are required to establish an education and training programme for police officers and Barangay officials in order to enable them to properly handle cases of violence against women and their children.

From an interview in Indonesia, ‘For the police units, they do training maybe once a year at the police academy. The training is for about two months. The focal person in charge from all provinces will be called to attend training. It is on women’s rights, gender, laws, psychological impact, coordination with hospitals etc. ... In the trainings we are involved, we do role-plays and we do also the evaluation of the training.’

In Thailand, female police investigating officers have been trained by the Women Centre for Peace and Justice. As one interviewee said: *'The training helps me understand the victim more and listen to them more. Even though the nature of interrogative police officers is we need to ask them like Q&A session, after the training I have realised that we do not need to ask them that much. If we deliberately listen to them, we could make the whole pictures. Then, the more we listen, the better quality of information we will have. Then, we could build up the add-on questions from the information in our hand. The female interrogative police officer association also contributes to the success of the cases because it provides us some spaces to share the experience and how to deal with the cases (they have the group Line [a chat app that is very widely used in Thailand] to share the information). When we have the complicated cases, we don't start from nothing. We could ask them directly and the friends there are willing to share. I will not waste our time in understand how to handle the case as well.'*

Feature Training support by development of tools and guidelines

In a number of countries, manuals, guides, and handbooks have been developed which provides written guidance for criminal justice providers and have been the base of training programmes. UN Women is developing a Bench book for judges in the region. UNODC has developed a training manual for prosecutors and conducted a trainer of the trainer course in Bangkok for regional prosecutors.

Thailand training linked to operational guidelines

UN Women has collaborated with the Royal Thai Police and the Office of the Attorney General in the training of police cadets and male and female police investigative officers on the protection of women, on ending violence against women and on the Domestic Violence Law. There has been similar cooperation in respect of specialised training modules and operating guidelines on the protection of women.

Viet Nam's guidelines and training

Viet Nam is currently developing criminal justice guidelines on how to handle cases involving violence against women. They are also developing training materials on the guidelines.

Cambodia's judicial bench book

UN Women reports working on the formulation of a judicial bench book on cases of violence against women which will be used as the main tool to train legal professionals on violence against women, including judges, lawyers and prosecutors. They are also involved in gender analysis of training curricula and in incorporating CEDAW into the judicial training courses.

Singapore Manual on the "Integrated Management of Family Violence Cases in Singapore"

This Manual was first developed in 1999 and last revised in October 2009. The manual spells out the protocols of agencies involved in the management of family violence. The manual covers the legislation and general principles of managing family violence cases, including procedures and recommended timelines to which service providers should adhere when victims of family violence approach an agency for assistance or information.

It contains information to enable service providers to: (1) obtain a sound understanding of the family situation; (2) understand the roles and needs of the various service providers; (3) provide safety strategies for the victim; (4) provide information to meet the needs of victims, such as legal provision, shelter and other resources available in the community; (5) increase the perpetrator's awareness of his violent behaviour and help him cease his abusive behaviour; and (6) inform the perpetrator of the risk he is under, should he continue to be violent.

Feature Inter-agency-joint training

The example of Singapore

The police have incorporated the management of spousal violence cases into the training syllabus for their trainees and such training has been given to doctors and social workers handling such cases.³³⁴ The Ministry of Community Development, Youth and Sports (MCYS) partners with social services agencies in running annual training for police officers to help them deal more effectively with victims and perpetrators. Inter-agency joint trainings between the Singapore Police Force (SPF) and social service agencies are conducted to strengthen the effectiveness of the family violence network system. This training focuses on appropriate responses to victims and perpetrators, inter-agency protocols and community resources for such families.

4. Element Four: Partnerships with non-governmental organisations

Partnering with women's rights groups and civil society organisations is seen as a key element in many of the good practices. Non-governmental organisations provide the perspective of women who have experienced violence and can explain the dynamics of violence against women in professional terms and make connections between the needs of victims and the duties of criminal justice providers.³³⁵ Research also found that the non-government sector played an especially key role in filling a huge gap in government service delivery. Rich partnerships and the full participation of women are another hallmark of a strategy which is more likely to be effective.³³⁶

The Updated Model Strategies recognise the need for a collaborative effort which includes working with non-governmental organisations and community groups, including organisations seeking women's equality, community leaders and elders, relevant professional associations, foundations, research institutes, religious and spiritual organisations and leaders, and both prominent and ordinary women. Women's rights groups have provided strong leadership in building an effective civil society voice, working with policy makers to push for changes in the law, demanding transparency in the activities of

³³⁴ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, "Integration of the Human Rights of Women and the Gender Perspective" E/CN.4/2003/75, 6 January 2003.

³³⁵ OSCE. 2009. *Bringing Security Home*.

³³⁶ ICCLR Resource Manual.

criminal justice agencies, and drawing attention to problems with implementation of the laws and policies. It should also be highlighted that men are indispensable allies in ensuring effectiveness in addressing violence against women and in showing that this issue should not be seen solely as a women's problem. It is necessary to engage the whole of society to tackle the problem.

Indonesia, Rifka Annisa

Rifka Annisa, which means 'women's friend' is a women's crisis centre in Yogyakarta, established through the courage of several female activists who wanted to provide support for survivors of violence against women. At the time of its establishment in 1993, it was the only women's crisis centre in Indonesia. It began with concern for domestic violence, dating violence, sexual harassment, rape and violence against children. However, it decided to focus on intimate partner violence, and in particular violence against wives. It offers a wide range of services: counselling by phone, letter and in person, and arrangement for legal and medical aid through networking with specialised organizations. Rifka Annisa also helped established special consultation rooms in police stations and helped to establish a special unit in hospitals for survivors of domestic violence.

Viet Nam, the NGO CSAGA

In Viet Nam, the NGO CSAGA recently rebuilt a program to support victims of domestic violence. They provide counselling for such victims and assist them in connecting with the police, courts, lawyers, the women union, and the authorities. *'We have experience of twenty years, so we have a good relationship with the police station and as an office it includes women's union and lawyer's system, about the lawyers we have some working like a network who are concerned about domestic violence who are willing to volunteer in some cases, with authorities it is quite easy to make contacts with them and interviews with victims and their families to meet the authority's and government officers in the community'* [Interview with Vietnamese NGO staff].

Thailand example

In Thailand, the police recognise the importance of working with NGOs by having NGOs involved in police training. *'We [as a victim support NGO] found that in many cases coming to us, the victims do not want to go further. If the interrogative police officers do not know the process, it must be very challenging. Basically, through our training, we want the female interrogative police officers to be in an environment where they can be mentored and be equipped with the necessary knowledge. Luckily, we have networks like the organisations working on the issue of violence against women. Those organisations point us to the places where we can request the budget to arrange our activities. Our additional role when we successfully organise training is that we will coordinate the Royal Thai police to approve the people who desire to attend our training.'* [Interview with Thai NGO staff].

5. Element Five: Monitoring and accountability

Oversight and monitoring mechanisms, both governmental and civil society based, are vital to ensuring an effective gender-responsive criminal justice system. Actors must be held accountable, and statistics play an important role in identifying discrimination in practice.

5.1 Oversight and accountability

An appropriate oversight and accountability mechanism can ensure that all criminal justice officials exercise their powers according to the rule of law and codes of conduct and that these officials are held accountable for any infringement thereof. Justice systems, and all actors within the system, must be accountable for ensuring that they deliver on their obligations. Attitudes of justice providers that foster, justify or tolerate violence against women need to be held up to public scrutiny and sanctioned. In order to ensure that the exercise of powers is undertaken according to the rule of law, codes of conduct encourage the development of enforceable standards of practice and behaviour that promote justice and gender equality.

Feature Oversight

Oversight of criminal justice practices by a senior officer or supervisor ensures that the case is properly assessed, a plan is developed and implemented, and criminal justice investigations and prosecutions are appropriately coordinated, and actions and findings are monitored and evaluated on an ongoing basis. Oversight will hold criminal justice providers accountable for their actions throughout the criminal justice process.

Box 70: ISO standard certification

In a number of Southeast Asian countries, different criminal justice agencies or units have undergone or are undergoing application to receive an ISO (International Standardized Organisation) certificate. ISO certification requires compliance with international standards as well as incorporating an auditing process. For example, in Malaysia the D11 specialized Sexual Crimes Unit in the police force received ISO certification in 2007. In Indonesia, the Ministry of Women explained that they are considering evaluating the referral centres P2app2a to be able to apply for an ISO certification. In the Philippines, a legal aid lawyer mentioned that they are in the process of revising their forms in order to be in compliance with the ISO requirements.

Feature Codes of conduct

Codes of conduct are important for accountability as these codes set standards of personal and professional conduct while on and off duty. They also deal specifically with such issues as sexual harassment in the workplace in each agency.

Feature Set up avenues of complaint

Complaint mechanisms need to be accessible to women without fear of reprisal or discrimination. Institutional structures should be in place that guarantee effective complaints by women free of fear of potential consequences and that provide for a process for reparations to victims where the criminal justice institution has failed in its due diligence obligation. Good practices include the establishment of a public complaint mechanism and independent inspectorates, including powers for surprise inspections. Also arms-length or independent organisations such as national human rights commissions or ombudspersons can consider individual complaints or petitions and carry out investigations. This can include complaints by victims as to failures in the criminal justice response.

Thailand's complaint mechanism

Thailand has a complaint mechanism based on Criminal Procedural Code article 157, which stipulates that a failure to appropriately perform one's jobs can result in the punishment for a criminal justice agency. An NGO noted that they can send an open letter to the prosecutor making a complaint. The NGO mentioned that if the police did not take a sexual violence case seriously and tried to mediate it without the victim's consent: *'I think we can complain to like Human Rights Committee. But then again we can even complain to the Chief of the police station but I was trying to make this police officer working for me. So if I try to report, you know to change from the bad practice to a good practice, I did not complain. I tried instead to find a way. Because I still have to work in this community and contact them a lot. So I tried to make them understand but not by confronting them. Yes that is one of the gaps that we may have between the ideal tools for complaint in the SOPs that are suggested by the international standards or organizations when they say if the police does not comply, then they should be punished etc but it does not seem easy on the ground to confront the very person who are taking care of your case (especially if there is no 'safe mechanism' in place). So how do you think that this could be improved?' [Interview with Thai NGO staff].*

In the Philippines, the representative of the Philippine Judicial Academy mentioned one case: *'In our case this happened in one of the jurisprudences I gave to you, the woman was being protected by a woman lawyer from an NGO helping domestic violence victims and the lawyer was good looking and the judge said, 'oh first of all if you were the victim in this case I would believe you, but here is an ugly person.'* The lawyer didn't want to talk anymore in front of the court and complained to the supreme court against that judge. He was fined because it was his first offense. It was a male judge. ... In the new jurisprudence, there is a section on gender sensitivity and sexual harassment. We even had a judge fired. If the misconduct is grave, gross misconduct, they are automatically disbarred'.

The example of Indonesia

In Indonesia, if the judge is being insensitive the victim could complain to the internal oversight body or the judicial commission. One scholar who studied 400 cases noticed many insensitive comments made by judges. In one case she notes, *'the judge says that the girl is a bad girl, she acquits the defendant because defendant and the girl had been in a sexual intercourse before so this is not rape. ... That could be complained. The judge*

undermined and dismissed the victim's testimony. ... I don't think the majority of people know how to channel their complaints and our president right now have been developing a complaint which is one portal to submit any kind of complaint to the respective ministries.'

Feature Civilian oversight

Civil society oversight can take many forms. Civil society organisations can be officially represented on oversight bodies, or invited to make submissions to inquiries and review boards. In many countries, civil society organisations prepare shadow reports to the CEDAW Committee.

The Philippines' Commission of Human Rights

In the Philippines, the Commission of Human Rights can receive complaints about the treatment of the police, prosecutors and judges towards the victims of violence against women. According to the Magna Carta, the Commission, acting as the Gender and Development Ombud, consistent with its mandate, shall undertake measures such as the following: monitoring, investigating complaints of discrimination, establishing guidelines and mechanisms that will facilitate access of women to legal remedies, assisting individuals file cases against agencies, etc. They can also penalise departments, agencies, or instrumentalities of government, government-owned and –controlled corporations, or local government units that violate the Act. 'They can but usually they don't complain against the duty bearers because they would go to the police to complain against violence and they get discriminated so they run to us so it is part of our mandate to investigate duty bearers.'

5.2 Monitoring and evaluation

A key step to know when a practice is a good practice is to include a monitoring and evaluation component when introducing a practice, whether that is law, policy or programme. Research and evaluation can be an extremely powerful tool for understanding and change.

Box 71: Features of effective monitoring and evaluation



Mechanisms for systematic and coordinated data collection on VAW.



Surveys for assessing the nature and extent of VAW.



Collect, analyse and publish data and information, disaggregated by gender, for informing policy



Monitor and publish annual reports on reporting rates and attrition rates.



Gather data on victim satisfaction with the criminal justice system.



Develop a set of indicators to measure VAW and the response.



Ensure the confidentiality and protection of women in the collection of data.

Source: Updated Model Strategies

Feature Establishing a monitoring mechanism

Some countries have created specialised national machinery to improve the status of women and to monitor the institutional response to violence against women. These institutions have proven to be most successful if they are situated at a central position in the governmental hierarchy and headed by a person with a cabinet-level rank. National machineries need to be provided with the mandate and sufficient resources to effectively monitor and coordinate gender equality measures in all sectors and state apparatuses.³³⁷

Indonesia National Commission on Violence against Women (Komnas Perempuan)³³⁸

The independent Komnas Perempuan was established in response to demands by women leaders and activists from a broad political spectrum for state accountability for the mass rapes that occurred during the 1998 riots. While VAW was the entry point, the mandate of this commission was then defined more broadly in terms of protecting and promoting women's human rights. Their mandate is to develop an environment that is conducive to preventing and strengthening efforts to eliminate all forms of VAW and the enforcement of women's human rights in Indonesia. To these ends, the commission is tasked with:

³³⁷ Erturk, Y. *Special Rapporteur of the Human Rights Council on VAW, Commission on the Status of Women, Fifty-First session New York, 26 February - 9 March 2007, Panel on Emerging Issues, Trends and New Approaches to Issues Affecting the Situation of Women or Equality Between Women and Men. March 2007, p 4.*

³³⁸ DCAF. "Training Resources on Justice and Gender-Training Package: Indonesia". 2009.

- ❖ Providing information and recommendations to the government, legislative and judicial bodies, as well as civil society organisations facilitating and advocating for the formulation and ratification of a legal and policy framework that is conducive to preventing and addressing all forms of violence against Indonesian women.
- ❖ Promoting public awareness of all forms of violence against Indonesian women.
- ❖ Undertaking monitoring activities, including fact finding and documenting all forms of VAW and violations of women's human rights and then publicising the results of such activities so as to encourage the necessary steps towards ensuring accountability for and addressing of issues uncovered in the monitoring process.

To fulfil its monitoring mandate, Komnas Perempuan compiles yearly data on cases of VAW handled by government (e.g., the police, attorney general, courts, hospitals) and NGOs around the country. It gauges annual trends, and prepared estimates of the number of cases per year. Its annual reports are then made public. Furthermore, it annually compiles data on VAW cases being handled by women's crisis centres, the police, the general prosecutors' office, and courts from around the country. The data is processed to provide a comprehensive national picture and analysed to identify broad trends and recommendations for action. The report is launched to the media, distributed to partner organisations in government and civil society, and uploaded to the Komnas Perempuan website. This partnership also includes policy dialogues with decision-makers, the development of curricula aimed at developing a gender-sensitive criminal justice system, as well as moot court competitions on VAW in law schools. The Commission also facilitates the growth, networking, and capacity building of women's groups, which provide services in counselling, legal services, and policy advocacy. While Komnas Perempuan receives complaints from individual victims of violence, it carries out direct monitoring only of cases which are considered systematic or state violence. While its mandate designates it as a national women's human rights institution, Komnas Perempuan does not have any formal investigative powers, like the Indonesian National Human Rights Commission, nor is it an authority comparable to a civil court. Its role is mainly concerned with standard setting and policy change.

The Philippines, The Inter-Agency Council on Violence against Women and their Children The Inter-Agency Council on Violence against Women and their Children (IAC-VAWC) in an interview admitted that there has been a lack of monitoring progress in these areas. One of the major activities identified in the new strategic plan is to develop a monitoring evaluation tool to determine progress in the implementation. One of the major issues identified is data harmonisation. *'Because various service providers are collecting their own data in terms of surveys, etc. So we are planning for the first week of June to have a meeting with all data collecting agencies on VAW so we will determine the data elements that each service providers should provide and what would be the reporting flow. The Philippines national police has a very good data collection mechanism, because from the Barangay level, it is required that the Barangay VAW desk officer submit a report to the municipal level in terms of how many Barangay Protection Order they issued, how many women they served, and then where did they refer the victims. So from the Barangay through the department of social welfare, or the police, or the medical services in the municipality. So everything that*

has been reported at the police station they are put in a “blaster” [short summary report] and that is the basis of the report being collected by the municipal police officer. And then they gather the reports from all the Barangays and cities in the area of jurisdiction, then it goes to the provincial level, and then the provincial police would consolidate and submit it to the regional police. And the regional PNP to the headquarters and that is where we get our data so we have disaggregated data per region. In all 17 regions.’ [Interview with IAC-VAWC members].

Feature Comprehensive and uniform data

Comprehensive and uniform data should be collected on gender-based violence crimes for monitoring purposes and advocacy for the necessary resources. Data on violence against women can be collected in many ways, including criminal administrative data; data based on surveys; data from national statistical agencies and qualitative data generated by government and non-government sources. Reliable, systematic and regular data collection is seen as a crucial component for a coordinated and integrated response to violence against women. Criminal institutions should have to report administrative crime data. The reporting should be mandatory, regular and transparent, and the results should be disseminated to the public.

Feature Monitoring the performance of the criminal justice system

Monitoring and tracking the criminal justice system response to violence against women cases (including attrition rates) aids in understanding the dimensions of the problem and also in examining what practices are working. This is important in order to ensure that the criminal justice system is functioning. Tracking how violence against women cases are dealt with provides important information about possible weaknesses in the system.

According to a judge from the Supreme Court of the Philippines, *‘We had a rapid assessment with different pillars of the justice system. We had one and there were recommendations out of it and we plan to deliver the recommendations to an existing body, with all the pillars of the JS [justice system], prosecution, the police, judges, DSWD [Department of Social Welfare and Development], the juvenile justice welfare council ... It was a rapid assessment on cases involving VAW and children. The facilities, the process of how to be handling the cases involving women and where to put children. ... We have a list of things that we should avoid. We don’t say anymore We try to say gender neutral words, such as chairperson not chairman so we have a list for our judges for them to avoid saying things that would denigrate women.’*

Malaysia’s WCC Watching Brief Lawyers Programme

The Women Centre for Change (WCC) Penang has developed a ‘Watching Brief Lawyers’ programme that monitors court processes in cases involving victims of violence against women. WCC is advocating for legal aid to pay for these lawyers who would put promote the interests of the victim. They are also lobbying for victims to have the right to a lawyer in criminal cases. At the moment, these lawyers are *amicus briefs* which means it is at the discretion of the judge to allow them a voice in court.

Viet Nam and Thailand attrition study

UN Women, UNODC and UNDP partnered with the Vietnamese Ministry of Justice and the Thailand Institute of Justice to conduct an attrition study on sexual violence cases. 'The Trial of Rape: Understanding the Criminal Justice Sector Response to Sexual Violence in Thailand and Viet Nam' examined how the formal criminal justice systems in Viet Nam and Thailand respond to reported cases of sexual violence against women and girls, identifies the barriers to accessing justice, the attrition points and the factors that contribute to attrition and impunity.³³⁹ This was action-oriented research, with the main findings that women who report cases of rape were found to encounter significant societal, legal and institutional policies and practices that act as barriers to justice being taken up by the governments of Thailand and Viet Nam in their reform of criminal law and practices.

Feature Victim satisfaction studies

A good practice in research is to conduct in-depth analysis of the experiences of women who have experienced violence.

The example of Viet Nam

In Viet Nam, two different studies have sought to illustrate the perspectives of victims on how the justice system treats them and handles their case.

- 1. In 2011 UNODC**, along with the Research Centre for Gender and Development and the European Institute for Crime Prevention and Control, conducted a victim satisfaction survey of police and legal aid services.³⁴⁰
- 2. In 2017**, UN Women supported the Ministry of Justice in conducting a 'Women's Justice Perception Survey'.³⁴¹ This study sought to identify perceptions of what gender-based violence constitutes crimes, how accessible criminal justice is for women who experience gender-based violence, and the level of knowledge of women of their rights and the criminal justice system processes, as well as their trust in the criminal justice system.

³³⁹ Skinnider, E. et al. 2017.

³⁴⁰ UNODC, the Research Centre for Gender and Development and the European Institute for Crime Prevention and Control "Research in the Quality of Criminal Justice Services Available for Victims of Domestic Violence in Viet Nam" 2011.

³⁴¹ Skinnider, E. "Access to Criminal Justice by Women Subjected to Violence in Viet Nam: Women's Justice Perception Survey" UN Women. Forthcoming.

CONCLUSIONS AND RECOMMENDATIONS



CONCLUSIONS

This research report has reviewed a wide range of good practices that countries in Southeast Asia have been undertaking in order to ensure that women subjected to violence in Southeast Asia have access to gender-responsive criminal justice processes and obtain effective justice, protection and redress. The review found that many good practices exist at each stage of the criminal justice continuum. The practices mentioned in this report are human rights-based, victim-survivor-centred and have an offender accountability approach. Good characteristics in many of these practices include promoting coordinated approaches, the involvement of all key stakeholders, providing sustained and adequate resources and having oversight and monitoring approaches. Some highlight the need to take into account the varying needs of different groups of women subjected to violence.

It is recognised that more work needs to be done to increase efforts of the criminal justice sector to end violence against women. Such violence continues to persist and remains one of the most under-reported crimes and the least likely to end in conviction. Countries in Southeast Asia, as across the globe, need to redouble their efforts to combat violence against women and move towards gender-responsive criminal justice. This report is meant to inspire the sharing of good practices within the region.

RECOMMENDATIONS

Recommendations for Southeast Asian States

The following are recommended steps for improving criminal justice systems in Southeast Asian countries so that they are more gender-responsive.

1 Conduct situational and gender analysis of criminal justice systems

Women face numerous barriers accessing criminal justice and protection in the Southeast Asian region. This is reflected in the high levels of underreporting and attrition rates as the cases progress through the criminal justice system. While many good practices exist in these countries, there are critical gaps in the provision of victim-centred criminal justice and protection services. It is important to conduct an assessment to find out the current situation, map the existing good practices as well as gaps in practices. The Updated Model Strategies and Practical Measures can assist countries in the region when conducting a situational and gender analysis of their criminal justice system.

2 Establish coordination mechanisms

Establishing a coordination mechanism which includes all relevant stakeholders can ensure effective implementation of good criminal justice practices that are provided in a gender-responsive manner. It is beneficial for a sustainable response to have a formal coordination mechanism with clear roles and accountability set out. Such a coordination mechanism can set out goals and objectives; establish performance measures; and ensure appropriate resources. It can facilitate cooperation and coordination among all stakeholders, both criminal justice and non-criminal justice agencies and organisations. Civil society organisations as well as government officials should be part of the coordination. It is crucial that members of the coordination body share the victim-centred philosophy and apply human rights standards of victim safety and offender accountability.

Develop or strengthen implementation plans for criminal justice systems to respond to violence against women

3

Given the differing mandates of each criminal justice agency and the concern that they often work in ‘silos’, an integrated and coordinated criminal justice response is important to enhancing the gender-responsive manner in which the criminal justice system responds to violence against women. Such implementation plans need to address the reality that most perpetrators of gender-based violence are known to the victims and ensure that such plans treat these cases as serious crime which require dedicated investigations and evidence gathering. Having a transparent set of standards and expectations from each agency that are based on common understandings of the victim-centred approach and offender accountability can contribute to providing for the protection and empowerment of women. It can also improve communication and linkages between the different criminal justice agencies, in order to ensure that a woman who is subjected to violence and seeks justice and protection will be met with the same understanding of her rights and her situation as she moves along the criminal justice continuum. This implementation plan needs to clearly identify tasks, time frames, roles and responsibilities, as well as the required infrastructure, human resources (e.g. necessary training) and funding.

4 Monitoring and evaluating implementation

Monitoring and evaluation are necessary for accountability, to advocate for stronger and comprehensive laws as well as more effective implementation of laws and policies. Collecting and reporting both qualitative and quantitative data is important, as well as ensuring that the data is interpreted correctly. Baseline data can be incorporated into measurement systems, and it is good to arrange for monitoring by an independent body and civil society. Ensuring that the data and analysis is publicly available is key to contributing to oversight and accountability of criminal justice agencies.

Recommendations for further research

1 Rigorous evaluations of existing good practices

At the national level, there was a lack of evaluated practices. Research and evaluation is essential for furthering the understanding that criminal justice agencies have of violence against women and improving the response through evidence-based reform. Monitoring and evaluating the implementation of good practices (the laws, policies and implementation actions) require data and analysis. This includes strengthening reliable, systematic and regular data collection, including criminal administrative data systems.

Filling the gaps in research

2

In order to ensure that good practices in the criminal justice system are accessible to all women, specific research is needed to gain a better understanding regarding on-line violence against women, violence against LGBTQIA, prostitution, and migrant workers. There is also a need to conduct research to address long-standing myths and misconceptions. For instance, research should be undertaken on the incidence, reporting and prosecution of false allegations to counter the belief that it is common for women to claim rape due to vengeance or blackmail.

3

Incorporating the victims' perspective into research

As part of monitoring and evaluating the implementation of good practices, it is important to evaluate how effective the criminal justice system is in meeting the needs of the victim. This can include the opinions of victims of the quality of services in the criminal justice system, and of cooperation between justice, health and social services sectors.

Establishing research sharing platforms at ASEAN level

4

Developing an electronic knowledge sharing platform for the range of stakeholders involved in research activities in this field can serve to support those who study as well as implement criminal justice practices to respond to violence against women. Such a platform could be launched at the ASEAN level to share available research. Furthermore, this platform can facilitate the uptake of new ideas with respect to good practices by criminal justice agencies, policy makers, civil society and other interested parties.

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