

BEST PRACTICES

- **Establishment of specialised police and prosecutorial units or designated officers:**
Section 3.2.4 of the UN Handbook for Legislation on Violence Against Women¹ recommends:
 - the designation or strengthening of specialised police and prosecutorial units; and
 - that complainants/survivors should have the option of communicating with female police officers or prosecutors.

This practice is, to some extent, addressed by subsection (13) of the Paper's *Best Practice* strategy, in relation to the continued education and training to be provided to police, prosecutors and judicial officers. However, PILON members should consider the UN's statement that "there is evidence that specialized units are more responsive and effective in dealing with violence against women." This should be balanced against the experience in some countries that establishment of such units may result in the marginalisation of women's issues.² Adequate funding and training is required to combat this potential.

- **Establishment of specialised courts or other dispute resolution mechanisms**
Laws should "provide for the creation of specialised courts or special court proceedings guaranteeing timely and efficient handling of cases of violence against women."³ "These courts provide a stronger possibility that court personnel will be gender-sensitive, experienced in the unique characteristics of violence against women cases, and may be able to process cases more quickly, reducing the burden on victims. Moreover, judges who consistently deal with cases of violence against women may see repeat offenders and can take appropriate action."⁴ It is noted that the Paper does consider the continued legal education and training for judicial officers (at subsection (13) of *Best Practices*).

Similarly, alternative dispute resolution (at both the pre-litigation stage and during court proceedings) has arisen in the global community as an effective practice to strengthen the judicial system.⁵ This might take the form of alternative tribunals;⁶ for example, the Caribbean Community Model Legislation on Sexual Harassment establishes a specialised tribunal to deal with cases of sexual harassment in the workplace, education, housing, and provision of goods and services.⁷ Insofar as pre-litigation mediation is concerned, such processes should not impede access to the courts or court ordered remedies and, in any event, the violence must continue to be recognised as a human rights violation (eg. it is likely that mediation is only appropriate in cases where the DV is not considered serious in nature).

These practices may pose resourcing issues in PICs.

- **Multi-Agency Risk Assessment Conferences (MARAC)**
MARACs are regular conferences on particular cases of domestic violence, which bring together the agencies involved in the cases to discuss the actions taken, the problems,

¹ UN Department of Economic and Social Affairs, Division for the Advancement of Women, *Handbook for Legislation on Violence Against Women*, July 2009; see also UN Division for the Advancement of Women, Expert Group Meeting Report, May 2005, available at: <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/FINALREPORT.goodpractices.pdf>

² UN Handbook, p 19.

³ UN Handbook, sec. 3.2.5.

⁴ Stop Violence Against Women, May 2010, *Implementation of Domestic Violence Laws*, available at: <http://www.endvawnow.org/en/articles/144-specialized-courts-tribunals-for-violence-against-women.html?next=145>

⁵ United Nations Development Fund for Women (UNIFEM), *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries based on International Standards and Good Practices*, June 2009, p 50, available at: <http://unwomen-asiapacific.org/docs/cedaw/archive/DomesticViolenceLegislation.pdf>

⁶ See UN Division for the Advancement of Women, Expert Group Meeting Report, May 2005, available at: <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/FINALREPORT.goodpractices.pdf>

⁷ UN Women, United Nations Entity for Gender Equality and the Empowerment of Women, *Components of Implementation of Laws on Violence Against Women*, available at: <http://www.endvawnow.org/en/articles/123-introduction.html?next=127>

measures to be taken to improve safety and access to justice.⁸ See similar system initiated by Cardiff Women's Safety Unit which holds regular conferences on a DV case, bringing together all agencies, including criminal justice organisations and other support services to discuss the actions taken, the problems, and to decide on measure to improve the safety and better access to justice for the complainant (see further relevance below in terms of inter-agency information sharing for monitoring and evaluation).

- **Time limit on activating legislative provisions**

The Paper's *Best Practices* (at subsection (9)) states that the implementation plan should include a clear timeframe. However, PILON may consider whether this should be incorporated into the legislation, as in the Philippines' *Republic Act 9262* (2004) which states that Implementing Rules and Regulations will be promulgated within 6 months from approval of the Act.

- **Penalties for non-compliance by relevant authorities**

Legislation should provide for effective sanctions against relevant authorities who do not comply with its provisions.⁹ (This is identified, to a degree, in the Paper as a solution for Police – at subsection (6), though this practice standard is arguably broader in applying to all public officials)

See Costa Rica's Criminalization of Violence Against Women Law (2007) which states public officials must deal with VAW swiftly and effectively, while respecting procedures and the human rights of women affected', or risk being charged with the crime of dereliction of duty.

- **Legislation applicable to employers**

Legislation should address women's economic empowerment, access to the labor market and safety in the workplace.¹⁰ See also the Istanbul Convention on preventing and combating violence against women which includes economic harm in the definition of violence against women. For this reason, employers and unions should also be included in the consultation, education and training considerations at subsections (4), (9)(c) and (13).

- **Clarification of intersection with customary law / training of faith communities**

It is important to clarify the relationship between customary and/or religious law and the formal justice system.¹¹ Consideration should at least be given to the intersection between the systems and the training of faith communities and traditional leaders. These groups should be included in the training considerations of the Paper's implementation plan, at subsection (9)(c). See also the Bougainville Centre for Peace and Reconciliation which was started to conduct grassroots training on non-violent dispute resolution and which led to development in cooperation with local chiefs of a training methodology considered congruent with Bougainville customary principles and practices.¹²

- **Bench guides for judges and court officials**

PILON Members should consider incorporating a strategy of producing bench guides for courts at subsection (12) of the *Best Practices*. For example, USAID successfully partnered with Albanian local stakeholders to produce family law and protection order benchbooks to assist in the implementation of new legislation.¹³

⁸ United Nations Development Fund for Women (UNIFEM), *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries based on International Standards and Good Practices*, June 2009, p 29.

⁹ UN Handbook, Sec 3.2.8.

¹⁰ UN Women, United Nations Entity for Gender Equality and the Empowerment of Women, *Components of Implementation of Laws on Violence Against Women*, available at: <http://www.endvawnow.org/en/articles/124-employers-and-unions.html?next=854>

¹¹ UN Handbook, at Sec. 3.1.5.

¹² International Development Law Organization, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*, 2013, p 27.

¹³ USAID, *Annual Report on Good Practices, Lessons Learned, and Success Stories*, 8-9 (2006), available at: http://pdf.usaid.gov/pdf_docs/PDACH681.pdf

- **Court reviews of batterer intervention programme compliance**

In the United States, several jurisdictions which employ batterer intervention programmes have implemented a mandatory review, thirty days after the date of the initial court hearing, for the court to review evidence of whether the batterer is complying with counselling. If this evidence is not presented or if the court receives evidence of non-compliance, a warrant for arrest is issued immediately.¹⁴ It has been suggested that a mandatory court review significantly reduces non-compliance with intervention programmes, as compared to referrals that are made after the trial is over.

Only applies where PICs implement a batterer intervention programme but could be modified as appropriate.

MONITORING AND EVALUATING – DATA TO BE COLLECTED

The UN Handbook, at Sec. 3.3.2., recommends that legislation should:

- require that statistical data be gathered at regular intervals on the causes, consequences and frequency of all forms of violence against women, and on the effectiveness of measures to prevent, punish and eradicate violence against women and protect and support complainants/survivors;
- require that such statistical data be disaggregated by sex, race, age, ethnicity and other relevant characteristics.

Examples of inter-agency coordination models for data sharing:

- The Indian Andhra Pradesh Public Model involves various agencies (police, protection officers, legal aid services) and service providers, and introduces the Domestic Incident Report Index, which aids agencies in case-tracking and enables follow-up even after the actions of protection officers.¹⁵
- The Duluth DAIP has an inter-agency tracking system to provide its participating agencies with information. The tracking system shares information, can follow a case from inception to closure, and can show trends in how cases are handled. The creation of protocols and the involvement of the community in its projects also forms part of the Duluth strategy. Finally, the DAIP has been conducting audits of every aspect of “case processing”, and provides a comprehensive list of changes required to fulfil the goal of survivor safety in a coordinated response system.¹⁶ Similar multi-agency coordination programmes have been successfully implemented in Canada.

Examples of data to be collected/used for monitoring:¹⁷

Review of court records

¹⁴ United Nations Development Fund for Women (UNIFEM), *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries based on International Standards and Good Practices*, June 2009, at Sec. 2.1.

¹⁵ United Nations Development Fund for Women (UNIFEM), *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries based on International Standards and Good Practices*, June 2009, at 27.

¹⁶ United Nations Development Fund for Women (UNIFEM), *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries based on International Standards and Good Practices*, June 2009, at Sec. 1.1.

¹⁷ From The Advocates for Human Rights report, *Documenting the Implementation of Domestic Violence Laws: A Human Rights Monitoring Methodology*, May 2011, pp 9 – 11.

1. Where there are domestic violence laws addressing civil order for protection remedies, review court records related to emergency and long term orders for protection.
 - a) Compare total number of applications to number of orders granted by the courts, prosecutors, or police.
 - b) Review date of application and date of order to determine delay in both applications for emergency orders and long term orders.
 - c) Review applications for the following factors and compare requests for relief to relief granted by the courts, by comparing the following:
 - Length of order;
 - Custody of children;
 - Perpetrator access to family dwelling;
 - Perpetrator access to children's schools, victim's workplace; and
 - Financial support, alimony, child support, rent payments, mortgage payments etc.
 - d) Review any documentation available regarding the basis for the decision to issue or deny an order.
 - e) Review records related to violations of orders for protection and re-offenses.

2. Review criminal court files for the following information:
 - a) Number of domestic violence cases filed by public prosecutors and the number filed by victims.
 - b) Compare number of cases filed to the total number of criminal cases and to the total number of assaults. (Look at other informative comparisons.)
 - c) Describe cases in detail, including the facts, how the police handled the case, the resolution of the case, and the punishment or penalties.
 - d) Review documents in the file including certificates from the forensic hospital. Compare the description of the injuries in the file to the medical certificate. Also, compare the general description of the injury to the grade or level of assault assigned by the forensic doctor.
 - e) Review any documentation of risk assessment in specific cases.
 - f) Review records of repeat offenders and document number of offenses, as well as penalties assessed with each offense. Document any escalation of severity of assaults and resulting injuries.
 - g) Review records for an assessment of whether the penalties are appropriate for the severity of the crime.

3. Review family court files to determine the number of divorces that involve allegations of domestic violence.
 - a) After reviewing the number of files generally, choose a reasonable time period for file review, e.g., one year, two years.
 - b) Determine the total number of cases and the number of cases that involve allegations of domestic violence.
 - i. Describe facts of the case.
 - ii. Describe how the court dealt with the abuse.
 - iii. Did the abuse have any impact on the outcome of the case?
 - iv. Review documents in the file including certificates from the forensic hospital. Compare the description of the injuries in the file to the medical certificate. Also, compare the general description of the injury to the grade or level of assault assigned by the forensic doctor.

4. Review domestic violence cases which have gone to international tribunals such as the European Court of Human Rights.

5. Review other important domestic violence cases from past years.

Other sources of information on country background, law and context

1. Reports – Review for information about the implementation of domestic violence laws, criminal convictions, penalties imposed, detention, and release of offenders, re-offenses, applications for

protective measures, civil remedies granted to victims including orders for protection, public awareness, and use of laws. Examples of relevant reports include:

- Human rights reports including country profiles, statements to the Commission of the Status of Women, Reports to CEDAW, Concluding Comments by the CEDAW Committee, and Report of the Special Rapporteur on Violence against Women;
 - Reports by country non-governmental organizations;
 - Reports prepared by government ministries on implementation of policies and programs relating to domestic violence;
 - Ombudsperson annual reports;
 - European Union Progress reports;
 - Council of Europe reports; and
 - United Nations organizations reports.
2. Statistics – Review for information about the implementation of domestic violence laws, criminal convictions, penalties imposed, detention, and release of offenders, re-offenses, applications for protective measures, civil remedies granted to victims including orders for protection, public awareness, and use of laws. Sources of statistics include:
- United Nations Statistics Division;
 - International surveys on domestic violence, such as the *WHO Multi-Country Survey on Women's Health and Domestic Violence against Women* (http://www.who.int/gender/violence/who_multicountry_study/en/) and the *International Violence Against Women Survey* (<http://www.heuni.fi/12859.htm>); and
 - Statistics on the implementation of domestic violence laws may be available from national statistics offices and relevant government ministries, law enforcement, prosecutors' offices, the judiciary, health professionals, and non-governmental organizations which serve survivors of violence against women. Monitors should note whether or not such data is publicly available and easily accessible.

RELEVANT GROUPS IN FIJI

Inter-Agency Taskforce on Elimination of Violence against Women and Children in Fiji