



Preventing and combating domestic violence against women



A learning resource for training
law-enforcement and justice officers



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Introduction

Domestic violence is one of the most pervasive forms of violence against women in Europe and beyond. It leads to serious health damage, and often may end fatally. Apart from physical injuries, it causes fear, distress and a loss of self-confidence. Physical, psychological, sexual and economic violence are employed to aggravate the feeling of vulnerability, lack of control over one's own body and feelings of hopelessness and shame. As a result of this, it destroys the victims' will-power and prevents them from being free and safe. As domestic violence is mainly perpetrated against women because they are women, and since it affects women disproportionately, it constitutes a form of gender-based violence. If not addressed adequately, it constitutes a violation of women's human rights.

Law enforcement and justice sector officers are crucial partners in any effort to effectively prevent and combat domestic violence against women. The role of prosecutors, judges and the police is particularly important in avoiding re-victimisation and ensuring the safety of victims involved in investigation and court proceedings. Close co-operation between these actors is also key at all stages of investigations and proceedings in order to secure convictions and convey the message that such violence is not tolerated. Most importantly, through their actions, these law enforcement and justice officers can contribute to empowering victims to make decisions that will increase their safety and help them end the cycle of violence. Yet, in many cases they lack the necessary knowledge, specialisation and tools in order to place the best interests of the victim at the centre of all measures, respond immediately and ensure that risks are effectively managed. As a result, due to lack of training and sensitivity to victims' rights and needs, the response on the part of the police and justice sectors is often inadequate resulting in secondary victimisation for the victim and impunity for the perpetrator.

Training law enforcement and justice officers can greatly contribute to shaping institutional cultures and practices that have proved ineffective in the past. It can equip these professionals with the skills, knowledge and sensitivity to respond appropriately to individual cases of domestic violence. Training can also help these professionals to instil a sense of trust in victims regarding the police and the justice system.

Background

Since 2000, Romania has taken several steps to improve the protection and support to victims of domestic violence. For example, Law 217/2003 on Preventing and Combating Family Violence was adopted and subsequently amended by Law 25/2012, bringing about several improvements in this field such as: specifying victims' right to social protection, counselling services, social integration, free medical assistance and legal aid; specifying obligations at central and local level in the field of implementation, monitoring and evaluation; and establishing inter-disciplinary teams to combat domestic violence at local level. One of the most important improvements of the law, however, was the introduction of court-issued protective orders and emergency barring orders. The law also extended the definition of domestic violence to encompass verbal, psychological, physical, sexual, social and spiritual violence and defined the notion of "family member" more broadly to cover current and former spouses, cohabiting partners and family members irrespective of biological ties. More recently, in June 2014 Romania signed the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention), and committed to ratifying the treaty.

This learning resource complements such national efforts, in particular the National Strategy for Preventing and Combating Family Violence (2013-2017) which set as a specific objective, the development and consolidation of professional competencies of all professionals working in this field through specialised training. This learning resource has been developed in the framework of the project "Joint Action against Domestic Violence (JAD)", under programme "RO20 Domestic and Gender-based Violence", and funded by the EEA and Norway Grants.

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Purpose and structure of the learning resource

This learning resource has been specifically developed for trainers delivering training to police, prosecutors and judges working with cases of domestic violence against women. It should be seen as a tool for developing training programmes which aim at sensitising law enforcement and justice officers to issues linked to preventing and combating such violence and to share good practices in their fields. As such, the learning resource focuses on improving the capacity of these professionals to respond effectively to such violence by fostering a victim-centred approach and providing them with tools to make sure their work takes into account the reality of victims' lives. Although the learning resource focuses on domestic violence, its content also applies to preventing and combating other forms of violence against women that occur beyond the domestic sphere.

Firmly grounded on the standards of the Istanbul Convention and on good practice in implementing these standards, the learning resource is divided into the following sections:

- Section 1** Understanding domestic violence against women
- Section 2** International and regional framework to prevent and combat violence against women, including domestic violence
- Section 3** Children living with domestic violence and support for children exposed to domestic violence
- Section 4** First responders and the role of law enforcement in addressing domestic violence against women
- Section 5** The role of the criminal justice system and prosecutors in effectively addressing domestic violence
- Section 6** Improving judicial response to domestic violence against women

Sections 1 - 3 aim at promoting a discussion and raising awareness on the dynamics of domestic violence and its different manifestations, the consequences for victims and their children, as well as on developments at international and European level addressing the issue. These sections should give the tools to trainers to equip police officers, prosecutors and judges with an understanding of the prevalence and seriousness of domestic violence, and help them reflect on how their own personal beliefs and attitudes can impact their responses. Sections 4 -6 on the other hand, aim at enhancing the skills and capacities of each professional group to respond appropriately in different settings while ensuring victim safety and empowerment, as well as perpetrator accountability.

It should be noted that all sections include key messages that trainers should strive to convey to participants. The sections also include a series of suggested activities that trainers may use in their trainings. Relevant hand-outs to be distributed to participants during the trainings are included at the end of the learning resource.

Section 1: Understanding domestic violence against women

1.1. Definition of domestic violence

Despite growing public attention and government pledges to eradicate this century-old scourge, women of all ages and backgrounds continue to be subjected to domestic violence in Europe and beyond. As mentioned in the introduction, the focus of this learning resource is on domestic violence against women and their children. In order to effectively tackle such violence, it is first important to understand what is meant by it.

Definition of domestic violence as set out in the Istanbul Convention

“Domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim (Article 3.b).

Domestic violence is the most common form of violence against women. Domestic violence typically comprises abusive and coercive behaviour such as physical, psychological or sexual violence, including rape. A typical pattern of violence may also involve economic abuse by denying financial independence and controlling economic decisions. Violent behaviour of this sort should never be considered as a series of unconnected events as actual physical violence is often the end result of months or years of intimidation and control. Moreover, domestic violence often precedes or accompanies other forms of violence against women such as stalking, sexual harassment, forced marriage, forced abortion, forced sterilisation and female genital mutilation.¹

As defined in the Istanbul Convention, domestic violence can occur between members of the family or domestic unit, irrespective of biological or legal family ties. Domestic violence can also manifest itself between current or former spouses or partners. Although domestic violence is most often perpetrated by men against former or current intimate partners (see Section 1.3), it is recognised that violence is also perpetrated by women and occurs in same-sex relationships. Although the term “domestic” may appear to limit the context of where such violence can occur, the Istanbul Convention recognises that the violence

1. If you would like to learn more about these forms of violence as addressed by the Istanbul Convention, please visit: www.coe.int/en/web/istanbul-convention/publications

often continues after a relationship has ended and therefore establishes that a joint residence of the victim and perpetrator is not required.

1.2. Domestic violence: an issue of power and control

Domestic violence is often blamed on stress, alcohol or mental illness. In reality, domestic violence is all about exerting dominance and control over another individual. Perpetrators choose to use violence in order to get what they want and maintain this control. Perpetrators often make very calculated decisions about when to use violence, how much violence to use and where to use the violence. A common pattern of domestic violence often starts with intimidation, humiliation and threatening behaviour. Violence is reinforced by establishing control over another person's life through isolation, manipulation and by placing limits on their personal choices and freedoms. The power and control wheel developed by the Domestic Abuse Intervention Project² can help us to understand some of the behaviours that are linked to domestic violence which perpetrators use in order to gain and keep control in their relationships.



Taken individually, these behaviours do not necessarily amount to abuse. Likewise, all of these types of abuse do not need to be present for a relationship to be abusive. Importantly, the wheel shows that physical and sexual violence are only one part of a system of abusive behaviour which may be happening at any one time. Physical and sexual violence are what bring all these behaviours together. One incident of physical and sexual violence, or even the threat of it, can be enough to make women and their children live in fear. This means that

2. For more information use the following link: www.theduluthmodel.org/training/wheels.html

physical or sexual violence are not necessarily present in all domestic violence cases. Inversely, the wheel also shows how psychological violence can lead to physical and sexual violence.

Key messages

- ▶ Domestic violence represents an abuse of power. Perpetrators use domestic violence as a means of exercising dominance and control over victims and their children.
- ▶ Perpetrators believe that they are 'entitled' to certain things within the relationship and they use violence to get them and keep the relationship the way they want it.
- ▶ Acts of physical and sexual violence - or threats to commit such acts – are the most apparent forms of domestic violence. The wheel of power and control shows how psychological and economic abuse can also have a serious and lasting impact on a woman's or child's sense of well-being and autonomy.

Suggested activity

- ▶ The wheel of power and control is often used in trainings for law enforcement and legal professionals and can be very useful in explaining the dynamics of abuse, barriers victims face or why victims might refuse to co-operate in investigation or criminal proceedings.
- ▶ Trainers may use "Hand-out 1- Power and Control Wheel" to facilitate a group discussion around issues of power and control and how it manifests in domestic violence:
 - Participants should be provided with a copy of the wheel.
 - Trainers should be prepared to deal with any stereotyping about the causes of domestic violence (see Hand-out 5 for a list of common myths and misconceptions).
 - If possible, it is recommended that this aspect of the training be jointly delivered with a representative from a non-governmental organisation working with victims of domestic violence. This can greatly help in getting the victim's perspective across.

Suggested activity

- ▶ Trainers distribute "Hand-out 2 – Reasons why women stay and reasons why women leave" to participants. The aim of this activity is to help participants to develop a better understanding of the often complex reasons why women "choose" to stay in an abusive relationship. The trainer should facilitate a discussion around the losses and gains of leaving and staying in an abusive relationship. Particular attention should be given to the fact that whilst the losses are immediate and harsh, the gains are usually some way in the future and require the victim to work through the process.

1.3. Extent of violence against women and domestic violence in Europe

Violence against women, including domestic violence in all its forms exists in all Council of Europe member states and occurs at all levels of society. A survey carried out in 2014 by the European Union Agency for Fundamental Rights (FRA)³, for which more than 40,000 women were interviewed in 28 countries, revealed that one in three women has experienced some form of physical and/or sexual abuse since the age of 15. The survey also revealed that two in five have experienced some form of psychological abuse and that 75% of working women have experienced some form of harassment in their lifetime. Although to date there are no comparative prevalence studies at European level, results at national level clearly show that the overwhelming majority of victims of domestic violence are women and the majority of perpetrators are men. With the exception of female genital mutilation and forced marriage, the same can be said for all other forms of violence against women. Women are also considerably more at risk of homicide/attempted homicide than men in the

3. European Union Agency for Fundamental Rights (2014). *Violence against Women – An EU wide survey. Results at a glance*. Luxembourg: Publications Office of the European Union. Available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf

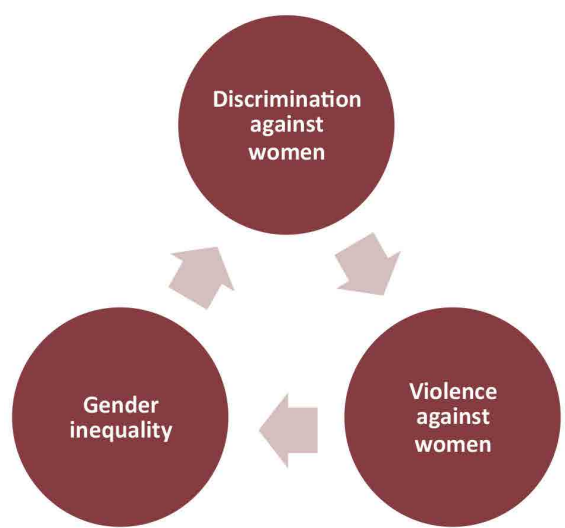
context of the family and intimate partner relationships⁴. In the case of stalking, for example, between 80 and 90% of stalkers are male and 80% of victims are female⁵. Such results clearly show the distinctly gendered nature of the phenomenon.

Research undertaken in Romania seems to point to similar conclusions. According to the FRA survey, Romania falls within the European average with 30% of women stating that they suffered physical and/or sexual violence since the age of 15. The survey also revealed that 24% of women in Romania have suffered violence at the hands of their partners or spouses. An additional 14% have suffered violence from a non-partner. Psychological violence affects between 30 and 39% of women. 6% of women suffered sexual violence from either a partner or non-partner, and in 97% of the cases of sexual violence the perpetrator was a man. In terms of prevalence rates, between 2006 and 2012, there were an estimated 72,000 reported cases of domestic violence. Of these cases, 720 resulted in death as a result of domestic violence⁶. According to a national survey on the implementation of restriction, 94% of those requesting the issuance of a restriction order against a perpetrator of domestic violence were women.

Despite these shocking results, reporting, prosecution and conviction rates are low for all forms of violence against women, but particularly for domestic violence, sexual violence, including rape, and stalking. Such statistics beg to ask the question: why are women and girls the target of such violence and why are perpetrators not being held accountable?

1.4. Causes of violence against women and domestic violence

In order to prevent and address domestic violence against women it is important to understand why such violence is so widespread in our societies. Violence against women, including domestic violence is the result of an imbalance of power between women and men. In other words, violence against women, in all its forms is deeply rooted in gender inequality. As such, it should not be considered as abuse experienced individually by women: it needs to be understood as a social problem, as a means of enforcing the subordination of women in all spheres of society. Throughout history, power relations between women and men have been unequal, resulting in male dominance over, and widespread structural discrimination against, women. To varying degrees, patriarchal cultural and sexual norms, discriminatory divisions of power and labour and the financial dependence of women persist in society – in Europe and beyond. As illustrated in the figure below, violence against women, including domestic violence is not only the result of these factors: it also reinforces them.



In simpler terms, our societies operate on the basis of shared attitudes and beliefs which are based on gender and which result in women being regarded as inferior to men. “Gender” is defined in the Istanbul Convention as “socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men” (Article 3c). Since these roles are socially constructed - meaning that they are not determined biologically - they can change over time and across different cultures. Gender roles are responsible for creating a “culture” of male domination which not only results in women having less privileges and rights in society, but

4. www.heuni.fi/material/attachments/heuni/projects/wd2vDSKcZ/Homicide_and_Gender.pdf
5. Mullen P.E., Pathé M.T. and Purcell R. (2009). *Stalkers and their victims* (2nd Ed.), Cambridge: Cambridge University Press.
6. www.unecr.org/fileadmin/DAM/Gender/publication/ENG_FINAL_ROMANIA_National_Review_Beijing_20_1_2_3_4.pdf

also contributes to making violence against women acceptable. Men and women are thus socialised to tolerate and even condone violence against women, and victims are brought up to remain silent. Recognising this, the Istanbul Convention, acknowledges clearly that in order to prevent violence against women in all its forms, it is necessary to change attitudes and behaviours, of both women and men, which are often influenced by prejudices, gender stereotypes and gender-biased customs or traditions (see Section 2.4 on “Gender equality as crucial for the prevention of violence against women”).

Key messages

- ▶ Violence against women, including domestic violence is both a cause and consequence of gender inequality and the discrimination that women face in all spheres of society.
- ▶ Domestic violence does not occur in a vacuum. Domestic violence as gender-based violence is embedded in the social and cultural values of society, which provide the breeding ground for tolerance towards this violence. Patriarchal society encourages men to believe that they are entitled to exercise power and control over their partners and/or their children.
- ▶ Recognising and responding to the deeply gendered dynamics of domestic violence is essential for effective prevention.

1.5. Barriers to access to justice for women victims of violence

The same mechanisms contributing to the perpetuation of violence against women are at play when women victims decide to report abuse and seek justice. Women victims’ inability to access justice is a complex social phenomenon that results from the existence, and often a combination, of inequalities at the legal, institutional, structural, socio-economic and cultural levels. Such barriers may affect access at all stages of the justice chain.

In cases where they have been subjected to abuse, socio-economic and cultural barriers can strongly limit the ability of women to pursue justice. Many of these barriers are the result of unequal social power relations in favour of men which result in lower wages, greater poverty, gender stereotyping and the unequal distribution of tasks within the family to the detriment of women. Accessing justice can be expensive and thus limit the access of women living in poverty or within low income categories. Costs are not only linked to legal fees and judicial taxes, but may be incurred as a result of ensuring transport to courts, accommodation or for instance childcare. Costs may further be increased by a lack of adequate and affordable legal aid and by lengthy proceedings. Although such costs may also be incurred by men, the main difference is that women are more likely to be economically dependent on others in order to cover such costs. In addition, in most cases women bear the burden of caring for children and family members. Such dependence and obligations might dissuade women from filing a complaint or pursuing a claim.

Discriminatory attitudes, stereotypes and prejudices at the cultural level also play a key role. This not only concerns women themselves, but may be embedded in institutional, law enforcement or legal culture. Regarding women specifically, cultural and social expectations and values may prevent them from seeking justice. This is particularly true in cases of domestic violence. Moreover, women from certain social categories such as lower-income classes are less likely to seek justice due to a lack of confidence in the justice system or for fear of mistreatment and a dismissive attitude by police officers. This lack of confidence derives from an institutional culture that may not sufficiently take into account the needs of women victims or that may result in discriminatory attitudes, secondary victimisation or inadequate legal counsel (see Section 1.13 on secondary victimisation) for more on the impact of professional attitudes on victims). Such women are also less likely to be aware of their rights, of the remedies available or which justice mechanisms should be accessed.

1.6. Challenges faced by particularly vulnerable groups of women

In addition to the barriers that women usually face when accessing justice, belonging to a particular vulnerable group of women can result in an increased restriction of their access to certain rights. This means that there are not only important differences between how women and men experience and are affected by violence, but in addition there are important differences among different categories of women. For example, women living in rural areas, elderly women, women with disabilities, lesbian/bisexual/trans-women, migrants (which include refugees, asylum seekers and undocumented women) and women from certain ethnic, minority or religious groups are more structurally disadvantaged. This may be due to a group of specific disadvantages at the socio-economic level, but may also be the result of a lack of awareness of their specific needs among

officials involved in the administration of justice. Such women are also often the victims of stereotyping. This results in bias and insensitivity on the part of law enforcement and justice officers.

For instance, women living in remote areas, elderly or disabled women, may not be able to travel long distances or may not be aware of existing services such as legal aid or the rights they are entitled to. Moreover courts, tribunals and police stations are not always equipped to receive disabled or elderly women. This does not only imply ensuring physical access to facilities, but also ensuring that such facilities have technical equipment to enable such women to testify without difficulties or participate as witnesses. The vulnerable legal status of some groups of women such as unregistered or irregular migrants, and asylum-seekers may make it particularly difficult to turn to authorities such as the police and courts. Such women may be reluctant to report abuse due to fear of being expelled from the host country or they may not be able to communicate with the police or with prosecutors and judges if interpretation is not provided free of charge.

Some women victims may also experience multiple forms of intersecting discrimination or disadvantage. This means that they experience discrimination on multiple grounds which reinforce conditions of inequality and social exclusion and which multiply the number of obstacles they face in accessing justice. One such particular group are Roma women.

Violence against Roma women

Due to their specific situation or status, women from Roma communities are at greater risk of violence against women, notably domestic and sexual violence and forced marriage. Yet across Council of Europe member states, a majority of cases of violence against Roma women often go unreported. Such underreporting is due to several factors. On the one hand, domestic violence against women is still largely accepted in Roma culture and perpetrators are rarely held accountable for their acts. In Roma culture there are highly defined and strictly regulated behaviours expected of men and women. Typically, there is a very strong hierarchical structure of the family: men are privileged and women are seen and treated as being inferior. Respect for the husband is seen as paramount and a lack of or even a perception of a lack of respect can be used to justify domestic violence. Domestic violence is thus a particularly taboo issue which may lead not only to reprisals from the abuser, but also from the family and the community, and which discourages Roma women from seeking protection and legal help. Moreover, Roma women are also largely dependent on their families and community. Lack of education, social isolation and poverty means that many Roma women do not know how to survive outside their communities. In addition, the general stigmatisation of Roma women in society and the lack of employment opportunities further impede an escape from the violent environment they find themselves in. Remaining in a violent relationship is consequently regarded as a better prospect than destitution and homelessness.

On the other hand, prejudices and stereotypes surrounding Roma often portray them as perpetrators rather than victims, resulting in a general mistrust between the police and Roma communities. Widespread discrimination and negative experiences in social services, the police, judicial system and fear of expulsion, leave Roma women reluctant to disclose violence or access protection and support. Roma women not only fear further victimisation by the police, but also exposing their partners or family members to a racist justice system. Child protection is also a particular concern for Roma women with children, who fear their children will be removed if they report abuse. Furthermore, there may be an issue of language. Where the victim is unable to communicate with the authorities because of an inability to be understood, the chances are that she will not be in a position to support an investigation or prosecution.

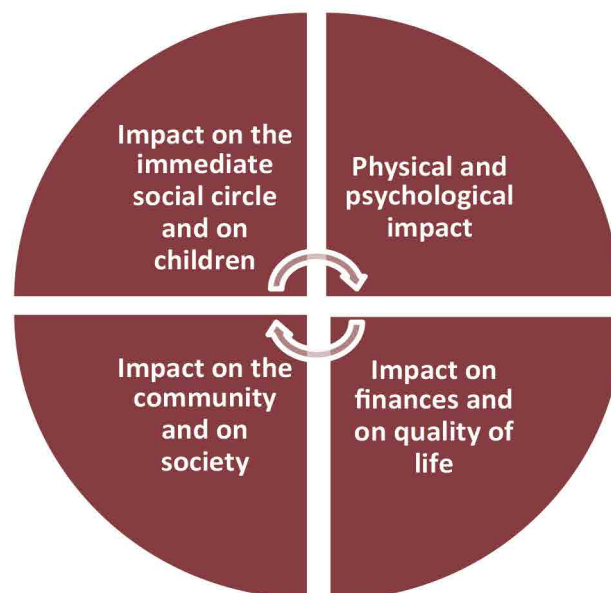
When tackling these types of cases, police and prosecutors need to be sensitive to these additional barriers. There needs to be a strong multi-agency response that ensures that victims from diverse backgrounds receive the most effective support. Police and prosecutors need to be made aware of the specific factors that can damage an effective investigation and prosecution. The best way to do this is to work closely with representatives from the community. Using their expertise, involving them in training and working in partnership with them can help to break down some of the mistrust between the community and the authorities.

Key messages

- ▶ Women victims of violence face inequalities at the legal, institutional, structural, socio-economic and cultural levels which seriously limit their ability to seek help and access justice.
- ▶ Women are not a homogenous group. Social categories affect the forms of violence women are exposed to and whether or not they find certain forms of violence acceptable. They also affect how and where women seek support, as well as how they experience and respond to such support.
- ▶ Roma women are at greater risk of violence against women and face multiple forms of discrimination.
- ▶ Law enforcement officers and legal professionals should be aware of the interplay of different social categories with gender, and understand the specific risks and/or needs of women belonging to one or more marginalised groups.

1.7. Consequences of domestic violence

Prevalence and conviction rates, as well as survey results, can help us greatly in understanding the extent of the problem and the forms of violence affecting women. These numbers, however, tell us nothing about the significant impact that such violence has on victims, their children, their families, their immediate social circle and their communities.



The effects of domestic violence, on a victim's health can be devastating, both in the immediate and longer term, since they often continue long after the relationship has ended. Women exposed to domestic violence are at risk of developing a range of health problems as a result of physical violence. Victims are also at increased risk of sexually transmitted infections, unplanned pregnancies and forced abortion. In far too many cases, domestic violence may also be fatal. These risks increase the longer an abusive relationship lasts.

Psychologically, the effects experienced by victims are very similar to those experienced by victims of kidnapping. Post-traumatic stress disorder⁷ and Stockholm syndrome⁸ symptoms are also very common and these psychological consequences of violence can be as serious as the physical effects. Domestic violence can lead to depression, anxiety, eating disorders, low self-esteem, panic attacks and alcohol/substance abuse, to name a few. Abuse can trigger suicide attempts, psychotic episodes, homelessness and slow recovery from mental illness.

Domestic violence also has significant consequences in the immediate social circle of the victim. Family, friends and co-workers risk retaliation and intimidation from the perpetrator if they try to intervene or assist the victim

7. Post-traumatic stress disorder (PTSD) is a mental health condition that's triggered by a terrifying event — either experiencing it or witnessing it. Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. Source: www.mayo.clinic.org

8. Stockholm syndrome refers to a group of psychological symptoms that occur in some persons in a captive or hostage situation. People with Stockholm syndrome report similar symptoms as those diagnosed with PTSD. Source: <http://medical-dictionary.thefreedictionary.com/>

in leaving an abusive relationship. Children exposed to domestic violence are at risk of development problems, psychiatric disorders, school difficulties, aggressive behaviour and low self-esteem. Children who have been brought up with domestic violence have higher risks of becoming perpetrators or of choosing abusive partners when they grow up, since they are more likely to view violence as an acceptable method of conflict resolution. The Istanbul Convention, for example, recognises (see Section 2.4 and Section 3) the severe impact that domestic violence has on children, both as victims and as witnesses.

Another consequence of domestic violence is a reduced quality of life leading to lower levels of overall satisfaction and happiness. In cases of domestic violence fear and anxiety take over every aspect of daily life and trying to cope makes holding down a job, being in a relationship, socialising, caring for children, etc. extremely difficult. In terms of financial effects, domestic violence may decrease the working ability of women, increase sick leave or lead to unemployment, resulting in a decrease of living standards for the victim. Domestic violence may also result in destruction or loss of property.

Finally, there are also consequences for the community as a result of a decreased contribution of the victim to society and of costs borne by society (discussed further below), but also in terms of the acceptability of violence. If perpetrators are not held accountable by the community, it means that their behaviour is tolerated, which is likely to lead to more serious violence⁹. It may also discourage future victims of domestic violence to report abuse and seek help.

Suggested activity

- ▶ The figure on the previous page may be used for a short brainstorming session on the effects of domestic violence on victims:
 - The trainer divides participants into small groups and asks them to list consequences falling under each area.
 - Once group discussions are over, the trainer notes group results on a flipchart and discusses them with the whole group.
- ▶ Trainers should also encourage participants to think in terms of immediate and long-term effects.

1.8. Costs of violence against women

Awareness of the financial impact of violence against women is helpful when trying to understand the magnitude of the problem and how it affects society as a whole, but also to make the case for effective prevention. Several studies point to alarmingly high estimated personal and societal costs of violence against women, in particular domestic violence (for example, France, 2006: 1000 million €/year; Switzerland, 2011: 164 million Swiss Francs/year; EU with 25 Member States (statistics without Romania, Bulgaria and Croatia) 2004: 16 000 million €/year; Norway, 2013: 500-750 million €/year; Canada, 2009: 7400 million USD/year)¹⁰. Costs linked to violence against women may be direct or indirect. Direct costs incurred by a victim are medical attention, legal services and victim support programmes. Indirect costs relate to the negative effect on the economy and society and economic loss to the victim.

1.9. The role of gender stereotyping and its impact on law enforcement and judicial officers

The process through which society assigns specific attributes, characteristics or roles to women and men is called gender stereotyping. Every day we make assumptions about a person because they are female or male. This is greatly influenced by our education, our culture, and the media, among other things. As a result, what we believe about women and men influences how we act towards them and creates expectations of how both women and men should behave. The fact that we also do this on the basis of other grounds such as ethnicity, religion and class, adds another layer of complexity to stereotyping (see Section 1.6).

Stereotyping, whether based on gender or any other ground, can cause professionals working with women victims of domestic violence to provide assistance on the basis of preconceived beliefs of what constitutes a

9. See Section 1.4 for an explanation of social mechanisms leading to the acceptability in our societies of violence against women, including domestic violence.
10. EIGE (2014). Estimating the costs of gender-based violence against women. Luxembourg: Publications Office of the European Union. Available at: <http://eige.europa.eu/sites/default/files/documents/MH0414745EN2.pdf>

“real” victim or how victims should behave. In the case of legal professionals, stereotyping may prevent them from reaching a view about a case based on relevant facts and actual enquiry. Furthermore, stereotyping usually leads to victim-blaming, which in turn may result in secondary victimisation, where the victim is re-traumatised by the very professionals and institutions responsible for assisting her (see Section 1.13 for more information on secondary victimisation).

1.10. Victim blaming

In our societies, there is much misinformation surrounding the issue of domestic violence. Such myths and misconceptions contribute to diverting attention away from the real problem and usually attach blame to the victim instead of the perpetrator. This phenomenon is known as victim blaming. Victim blaming is “a devaluing act that occurs when the victim(s) of a crime or an accident is held responsible — in whole or in part — for the crimes that have been committed against them. This blame can appear in the form of negative social responses from legal, medical, and mental health professionals, as well as from the media and immediate family members and other acquaintances”¹¹. Such attitudes and behaviour on the part of professionals lead to secondary victimisation (see Section 1.13). Perpetrators also tend to blame victims and don’t take responsibility for their actions. In many cases, victim blaming can lead to situations where the victim blames herself for the violence.

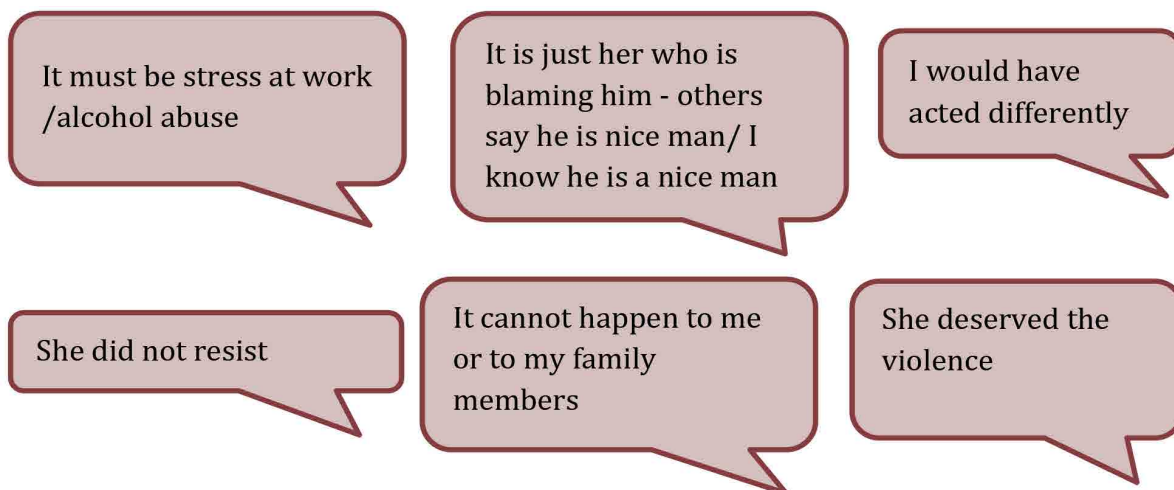


1.11. Examples of victim blaming attitudes

The diagram shows six speech bubbles, each containing a common victim-blaming attitude:

- She is reporting because she wants revenge or wants to get custody of the kids
- It is only a family dispute/ It is only domestic
- It is her fault
- What did she do that the situation turned out so bad?
- He has never hit her, so it is not really abuse
- Why did she wait so long to leave him? Why doesn't she just leave?

11. The Canadian Resource Centre for Victims of Crime (2009). “Victim blaming”. Available at: http://crcvc.ca/docs/victim_blaming.pdf



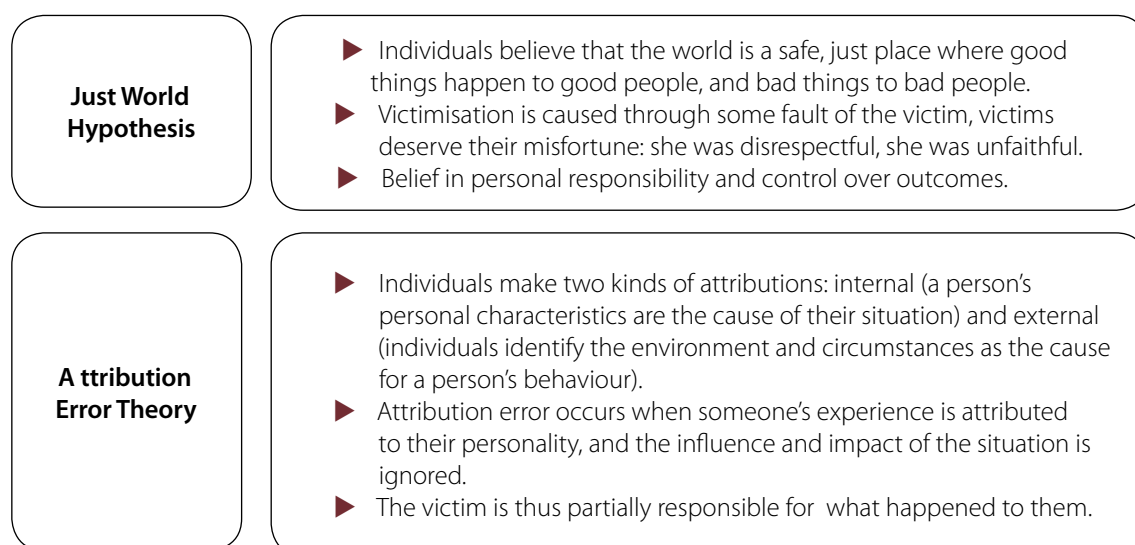
Adopting a victim-centred approach enables professionals to avoid some of the pitfalls that can be common in tackling cases of domestic violence. A lot of victims are scared of approaching the police and will typically only call the police in a crisis situation. If they are met with a lack of empathy, disbelief, stereotyping and victim blaming at this stage, the chances are that they will not engage with the legal process at all. No matter the background of the victim, where they are held partly or fully responsible for the violence, the result is further trauma. Professionals must ensure that victims are dealt with appropriately at every stage of the process, from the first report, right through to the conclusion.

Suggested activity

- ▶ Trainers distribute “Hand-out 3 – Examples of terminology/phrases to avoid when dealing with a case of domestic violence” and facilitate a discussion on how legal and law enforcement professionals should communicate with victims in order to avoid blaming attitudes.

1.12. Why do we blame victims?

As mentioned above, myths and misconceptions about victims, perpetrators and the nature of violent acts can lead individuals to choose to blame victims for the abuse they have experienced. The most frequent reasons of victim blaming include belief in a just world, attribution error theory, and invulnerability theory¹²:



12. Ibid.

Invulnerability Theory

- ▶ Individuals blame victims in order to feel safe themselves, and protect their own feelings of invulnerability.
- ▶ Example: "She was raped because she walked home in the dark. If I don't act like the victim I will never be raped".

Suggested activity

- ▶ Trainers may do the following exercise in order to help participants identify and confront common myths about domestic violence:
 - Participants are asked to complete "Hand-out 4 – Myths and facts about domestic violence: Questions" individually.
 - The whole group discusses the reasons behind these myths.
 - Trainers guide the discussion by providing the "truths".
- ▶ Alternative method: Trainers may start a brainstorming session about myths surrounding domestic violence by using the following questions as guidance:
 - Are there common myths about domestic violence that you know of?
 - What do these myths assume about the causes of domestic violence?
 - How do these myths impact the work of legal professionals/police officers?
 - Following the group discussion, "Hand-out 5 – Myths and facts about domestic violence: Answers" is distributed to participants.

1.13. Secondary victimisation

The concept of secondary victimisation was first developed in the 1980s by women's non-governmental organisations working with victims as a way to describe women's experiences with the justice system, and to explain why women were reluctant to report cases to the police.

Secondary victimisation can be defined as additional trauma caused by stereotyping and victim-blaming attitudes, behaviours, practices and processes engaged towards victims of domestic violence - or other forms of violence against women - by institutions, service providers, the media, community and/or family. Secondary victimisation consequently occurs through the intentional or unintentional responses of individuals and institutions to the victim after they have been subjected to an act of violence. In addition to victim blaming, examples of secondary victimisation include disbelief or disinterest, passing judgement, lack of empathy and sensitivity, siding with the perpetrator, intrusive behaviour, offering conditional help, asking inappropriate questions and omitting information.

The effects and impact of secondary victimisation are contrary to a victim-centred approach to domestic violence and are likely to lead to ineffective and harmful interventions. If the victim has a re-traumatising experience from contact with institutions and/or services, it can minimise her trust in the system as well as minimise her belief that there is someone who can help her and her children, in addition to increasing the probability that she will not seek help in the future.

Key messages

- ▶ Myths and misconceptions about domestic violence reinforce stereotypes while encouraging victim blaming and the belief of abusive men.
- ▶ Secondary victimisation can result from the failure to treat victims with dignity, respect and understanding of the dynamics of offences. Victims who have been exposed to secondary victimisation are less likely to report abuse, and less willing to testify.
- ▶ Professionals need to be aware of their own fears and issues around victimisation, prejudices and stereotyping so that they don't impact the support that is offered to victims.

Section 2: International and regional framework to prevent and combat violence against women, including domestic violence

In recent decades, developments in international law in the field of gender-based violence have had an ever-growing impact on domestic legal systems in Europe, and thereby also on the daily work of domestic judges, prosecutors and police officers. These professionals play an essential role as promoters of international obligations and standards to effectively prevent and combat violence against women in the exercise of their duties. This section provides a brief overview of key developments at the international and regional levels in the field of preventing and combating gender-based violence and, more specifically, domestic violence. It also provides a description of the core principles and standards established by the Istanbul Convention.

2.1. International and regional standards

For many years, violence against women, and more specifically domestic violence, was considered outside the realm of human rights issues because perpetrators were private persons – in many cases husbands, partners, brothers, fathers or sons – rather than actors working on behalf of the state. This is due to the fact that international human rights law was originally designed to protect individuals from abuse of power from the State. Since the 1990s however, violence against women, including domestic violence, has received increasing attention by the international community and, subsequently, in international law. This surge in attention has resulted in the adoption of several crucial international and regional instruments including:

- ▶ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW hereinafter) in 1979, and the decisions and recommendations¹³ adopted by the CEDAW Committee;

13. A key recommendation of the CEDAW Committee with regard to violence against women is *General Recommendation n° 19*, 1992.

- ▶ the UN Declaration on the Elimination of Violence Against Women, 1993¹⁴;
- ▶ the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Pará Convention), 1994;
- ▶ the Beijing Declaration, 1995;
- ▶ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003; and
- ▶ Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence.

These legal benchmarks have been instrumental in bringing about a change in attitudes: from regarding violence against women – and especially domestic violence against women – as a private matter committed with widespread impunity, to treating the issue as a matter of public concern. Most importantly, this growing body of international and regional standards established the prohibition of violence against women in international human rights law by focusing on, and addressing, discrimination and violence against women, and protecting the human rights of women on an equal footing with those of men.

2.2. Case law from the European Court of Human Rights

Parallel to such developments, jurisprudence from the European Court of Human Rights (ECHR) has played a major role in shaping and strengthening the international framework on violence against women, by addressing the right of women not to be subjected to such abuse. Cases only reach these courts when national remedies have failed. Consequently, these cases strongly illustrate the failure of the State to respect, protect and fulfil human rights, from the point of view of the victim and her appraisal of how her human rights have been affected. Case law has also been important in revealing the need for co-ordinated and comprehensive responses and placing the responsibility on the State to effectively prevent and combat gender-based violence.

With respect to domestic violence more specifically, two landmark ECHR cases, *Bevacqua and S. v. Bulgaria* and *Opuz v. Turkey*, are worth mentioning here. Issued in 2008 and 2009, the ECHR's decisions recognised and advanced the due diligence standard in the context of domestic violence, signifying a turning point in international law. In both cases, the ECHR established that states are not only obliged to refrain from committing acts of violence themselves, but are also responsible for otherwise private acts of domestic violence if they fail to fulfil their duty to prevent and punish such acts. According to the ECHR this positive obligation arises where the "authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk".

Furthermore, in the *Opuz v. Turkey* judgment, the ECHR recognised the interconnection between discrimination and violence against women and held – for the first time – that domestic violence constitutes a form of discrimination because it mainly affects women and that women are not protected by the law on an equal footing with men (see Section 1.5). The Court also held that the general and discriminatory judicial passivity and insufficient commitment on the part of authorities to take appropriate action create a climate conducive to domestic violence.

The above-mentioned developments in international standards and jurisprudence represent an important shift in how we perceive violence against women in all of its forms, and have resulted in the definition of violence against women as a human rights violation. Through violence, significant numbers of women are barred from fully enjoying their human rights, developing their full potential and leading independent lives. Violence against women, including domestic violence, is thus a major obstacle to their full advancement. Increasingly, due diligence has become the prevailing standard for assessing whether authorities have taken appropriate action to address violence against women. As a result, the State has been regarded as being responsible not only for the actions of its own agents – which may include law enforcement and justice officers – but also as also having a duty of diligence to create and enforce laws and strategies that will reduce the risk of domestic violence.

14. The 1993 Declaration on the Elimination of Violence against Women became the first international instrument to address violence against women explicitly and specified the types and forms of violence against women and the contexts in which it occurs.

Key messages

- ▶ **Under international law, domestic violence is treated as:**
 - discrimination against women and a violation of women's human rights;
 - torture in the private sphere;
 - a violation of the right to life/quality of life and the right to family life.
- ▶ **Individual rights at stake in the context of domestic violence:**
 - a) The right to life and personal integrity;
 - b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
 - c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
 - d) The right to liberty and security of person;
 - e) The right to due process/equal protection under the law;
 - f) The right to equality in the family; and
 - g) The right to the highest standard attainable of physical and mental health.

Tip for trainers!

- ▶ ECHR judgments are an excellent resource for concrete examples where state authorities have failed to diligently prevent, investigate and punish acts of violence against women. Trainers may find it useful to include a discussion, Q&A or base role-play exercises on ECHR case law during training sessions.
- ▶ The following links provide an overview of judgments (including those concerning Romania) passed by the ECHR in the field of violence against women and domestic violence:
http://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf
http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf

2.3. Addressing European problems in preventing and combating violence against women

Over the past three decades, efforts at international level have certainly had an impact in Council of Europe member states and have contributed to increasing intervention on the part of state authorities. They range from the adoption of laws, and the introduction of criminal offences, to the provision of specialised services and ensuring access to protective civil and criminal measures. However, despite an increase in support services, changes in the law and improved training for professionals, there is still neither effective prevention, protection, nor adequate support for women victims of violence against women in Europe. European problems in this field include¹⁵:

- ▶ different levels of protection and support among Council of Europe member states;
- ▶ insufficient geographical coverage and funding of services for victims;
- ▶ lack of multi-agency co-operation between actors providing protection and support;
- ▶ protection and support services not meeting the needs of victims;
- ▶ negative and discriminatory attitudes towards women victims from the police, the judiciary or social services;
- ▶ low reporting, prosecution and conviction rates.

Recognising the magnitude of the problem and the need for harmonised legal standards to ensure that victims benefit from the same level of protection everywhere in Europe, the Council of Europe decided in 2009 to draft a legally-binding treaty in this field. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was drafted over the course of just over two years and was opened for signature on 11 May 2011 in Istanbul, the city after which it is named. Following its 10th ratification the treaty entered into force on 1 August 2014¹⁶.

15. Council of Europe (2008). Final Activity Report: Council of Europe Task Force to Combat Violence against Women. Strasbourg: Council of Europe.

16. As of 19 January 2016, 19 member states of the Council of Europe have ratified the Convention and 20 have signed it.

2.4. Core principles and standards of the Istanbul Convention

The Istanbul Convention is a comprehensive and complex treaty¹⁷. It is at the same time a human rights treaty and a criminal law treaty, but it is also an instrument for promoting greater gender equality. The Istanbul Convention answers the basic question of what are the minimum standards and measures state authorities need to implement in order to effectively respond to violence against women and domestic violence. Drawing on international and European standards and case law, as well as best practices and lessons learned at national level, the Istanbul Convention is the most far-reaching development in this long line of initiatives, and provides a condensed and detailed blueprint for action in this field.

What makes the Istanbul Convention so ground breaking? A major added value of the Convention for the international legal framework is that it is the first treaty to provide a legally-binding definition of violence against women as a violation of human rights and a form of discrimination against women, and to integrate the due diligence standard by defining it as the obligation of states “to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors” (Article 5, paragraph 1). States Parties are therefore held accountable for failing to diligently prevent and combat all forms of violence against women, including domestic violence. By accepting the Istanbul Convention, States Parties are obliged to change their laws, introduce practical measures and allocate resources to effectively prevent violence against women and domestic violence, protect victims and prosecute perpetrators. It also breaks new ground by requesting states to criminalise the various forms of violence against women, including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilisation.

In the following paragraphs, the core principles of the Istanbul Convention are highlighted.

Gender equality as crucial for the prevention of violence against women

The measures of the Istanbul Convention are firmly based on the premise that violence against women cannot be eradicated without investing in greater equality between women and men and that in turn, only real equality between women and men and a change in power dynamics and attitudes can truly prevent violence against women (see Section 1.4). The key to combating violence against women is not crime control. It is making sure that women and men are equal partners, have the same rights and responsibilities, the same opportunities and that their contribution to society is equally valued and respected. Consequently, the Convention contains a number of provisions which aim at advancing the status of women in society *de jure* and *de facto*.

Prejudices, customs, traditions and other practices based on the inferiority of women or on stereotyped roles for women and men abound. Naturally, they influence gender relations and interpersonal relationships. They also affect how women are treated and perceived by public institutions and societal structures, but also by, for example, the legal system (see Section 1.13). For this reason, the Istanbul Convention aims at changing attitudes and eliminating stereotypes not only at the level of individuals, but also at the level of institutions. It does so, for example, by placing the obligation on States Parties to conduct regular awareness-raising campaigns (Article 13), introduce teaching material at all levels of education (Article 14), regularly train all professionals in contact with victims including legal professionals and the police (Article 15), set up perpetrator programmes (Article 16), and involve the private sector and the media as partners in tackling violence (Article 17).

The human rights, needs and safety of the victim come first

The Istanbul Convention makes it clear, that in order for victims to get the best support possible, their rights, needs and safety must be placed at the forefront of all interventions. This means offering protection and support when women at risk need it most, treating them with respect and sensitivity, and empowering them to make informed decisions that best reflect their interests. This requirement is further reinforced by the prohibition to discriminate on any grounds when providing protection and support to victims (Article 4, paragraph 3).

Ensuring that victims’ needs are met also implies taking into account the needs of women made vulnerable by particular circumstances (Articles 12, paragraph 3 and Article 18, paragraph 3). Vulnerable groups may include¹⁸ pregnant women and women with young children, disabled women, including those with mental or cognitive impairment, women living in rural or remote areas, substance abusers, sex workers, women of national or ethnic minority background such as Roma women, migrants – including irregular migrants and

17. It should be noted that the Istanbul Convention is open to ascension to non-member states of the Council of Europe.

18. This is not an exhaustive list of women made vulnerable by particular circumstances.

refugees, lesbian, bisexual and trans-women. Perpetrators often choose to target such persons because they know that they are less likely to be able to defend themselves, or seek prosecution of the perpetrator and other forms of reparation, because of their situation. These groups of women are at particular risk of domestic and sexual violence and experience additional barriers to services and protections.

Domestic violence as affecting women disproportionately

In line with the recognition of the structural and gendered nature of violence against women, the Istanbul Convention requires States Parties to apply a gender lens when addressing domestic violence. As discussed under Section 1.3, the overwhelming majority of victims of domestic violence are women and girls. This does not mean that men do not experience domestic violence or that they do not need support. In fact, the provisions of the Istanbul Convention have been drafted in gender neutral language, which means that any of its provisions can be implemented with a view to supporting and protecting men and boys who experience any of the forms of violence covered by the Convention, with the exception of female genital mutilation and forced abortion (Article 2, paragraph 2). What it means is that as an obligation of the Istanbul Convention particular attention must be paid to women victims of domestic violence when drafting legislation, developing strategies, allocating budget, in the provision of services, protection and in ensuring access to justice.

Addressing the needs of children as victims and witnesses of domestic violence

While it is important to recognise that most victims of domestic violence are women, it is equally important to recognise that many of these women have children. In some cases, the violence is directed at both, women and children. In other cases, children are not targeted themselves but witness violence against their mothers. For this reason, the Istanbul Convention includes several provisions that address both children as direct victims of physical, sexual or psychological violence, and children who witness such violence between their parents or family members. When it comes to protection and support services, the Istanbul Convention requires all measures of protection to take into account the relationship between victims, perpetrator, children and their wider social environment. The aim is to avoid a situation where victims and their needs are addressed in isolation or without acknowledging their social reality (Article 18, paragraph 3). The Istanbul Convention also calls for specialist support for children in such situations (Articles 22, 23 and 26) based on their needs. This includes age-appropriate psycho-social counselling and respect for the best interests of the child.

Several measures are also foreseen in order to avoid secondary victimisation and repeat victimisation. For example the Convention requires judges to take into consideration any known incidents of domestic violence when they take decisions regarding custody or visitation rights (Article 31). There have been examples of an abusive parent being granted visitation or even custody rights simply because it was considered to be in the best interest of the child to maintain contact. The Istanbul Convention now clearly establishes that violence against the non-abusive carer or the child itself will always need to factor into decisions on the exercise of parental rights and that the exercise of visitation or custody rights shall never jeopardise the safety of the victims or that of their children.

One of the major aims of the Istanbul Convention is to end impunity for all acts of violence against women and domestic violence. It therefore introduces a range of measures to improve the capacity of law enforcement agencies to investigate and prosecute such cases. Moreover, it contains a number of measures designed to encourage victims to file complaints and testify, even if it means testifying against a close member of the family. In this context, and in line with the Council of Europe Guidelines on Child-friendly Justice, the Istanbul Convention requires States Parties to afford child victims and child witnesses special protection at all stages of investigations and judicial proceedings (Article 56). Children are much more vulnerable and likelier to be intimidated by having to face the perpetrator in court. For this reason, the best interest of the child must be the guiding principle when children come in contact with the justice system as a result of domestic violence.

Co-ordinated and multi-agency approach

Due to the complex nature of gender-based and domestic violence, no single agency or institution can successfully tackle domestic violence on its own and isolated policies are not sufficient in responding to such a complex and multi-faceted problem. Good practice examples show that results are enhanced when law enforcement authorities, the judiciary, victim support services, child protection agencies, non-governmental organisations and other relevant partners join forces to develop a comprehensive and co-ordinated response to combating gender-based violence.

The Convention addresses the need to co-ordinate measures and to implement them by way of effective co-operation among all relevant actors playing a role in preventing and combating violence against women and domestic violence (Article 7, paragraph 2). More specifically, the Convention requires that in providing support to victims and witnesses, States Parties must provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities (Article 18, paragraph 2). It also recognises the work and expertise of non-governmental organisations in this field and asks States Parties to co-operate effectively with these organisations (Article 9). The issues of risk assessment and risk management, the need for co-ordinated safety and support measures, and for regular training on multi-agency co-operation are addressed in Articles 15 and 51.

Monitoring

Finally, the Convention also establishes a monitoring mechanism to assess how well its provisions are put into practice. This monitoring mechanism consists of two pillars: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent expert body, and the Committee of the Parties, a political body composed of official representatives of the States Parties to the Convention. Their findings and recommendations will help to ensure states' compliance with the Convention and guarantee its long-term effectiveness.

Further reading

- ▶ More information and publications on the standards and measures included in the Istanbul Convention can be found using the following link:
www.coe.int/conventionviolence
- ▶ The Romanian version of the Convention is available at:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046253e>

2.5. Other developments at European level

To date, European Union (EU) law has not adopted any definition, legislation or strategy on violence against women in all its forms nor has it regulated the key substantive criminal law issues dealt with in the Istanbul Convention¹⁹. There have however been some important developments in the field of rights for victims of crime, cross-border application of protection orders (both civil and criminal), and other forms of cross-border co-operation covered in the scope of the Istanbul Convention. The following regulations are particularly worth mentioning:

- ▶ **Directive 2011/99/EU of 13 December 2011 on the European Protection Order**, allowing victims of violence – notably those who have suffered domestic violence or stalking - to have any restraining, protection, and barring orders issued in one EU member state to be quickly and easily recognisable across the EU through simple certification.
- ▶ **Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime**. The Directive establishes a series of rights, support and protection that a victim of crime - including gender-based violence – is entitled to receive before, during and for a period after criminal proceedings.

19. The Istanbul Convention provides for the signing and the ratification of the Convention also by the European Union. The EU can accede to it to the extent of its competences. The EU is currently examining this possibility.

Section 3: Children living with domestic violence and support for children exposed to domestic violence

Children exposed to domestic violence can be exposed directly (as primary victims) or indirectly (as secondary victims) by being a “witness” to the violence. In the case of domestic violence it is acknowledged that children do not need to be directly affected by the violence to be considered victims. Witnessing domestic violence can be just as traumatising.

The family is usually considered as a safe place for children. But when parents or other persons close to the family become perpetrators of violence (psychological, physical or sexual) they can do great harm to children.

As professionals, we all have a duty to act when we believe a child has been exposed to violence. Management and individual staff members in public agencies have a special responsibility. We can all make a difference in the lives of children at risk. There is no excuse for looking the other way.

Key messages

- ▶ Children are affected by domestic violence in two ways:
 - **Directly**: where they are primary victims themselves and;
 - **Indirectly**: where they are secondary victims by virtue of witnessing the violence.

3.1. Definitions

The UN Convention on the Rights of the Child defines a child as anyone below the age of 18 years.

Previously, it was accepted practice to speak about children as witnesses of domestic violence, in the context of them witnessing violence perpetrated against the abused parent. As a result of research, it is now recognised that children are not merely witnesses to violence, but indirect victims themselves. Children experience the violence with all their senses as though it is happening to them. Research also shows that where violence occurs, a high percentage of children are either in the same room or very close by. The Istanbul Convention addresses this issue by highlighting the fact that “while it is important to recognise that most victims of domestic violence are women, it is equally important to recognise that many of these women have children. In some cases, the violence is directed at both, women and children. In other cases, children are not targeted themselves but witness violence against their mothers. Either way they suffer and either way they need to be protected.” There are also several provisions in the Istanbul Convention that address the issues of children as direct victims of physical, sexual or psychological violence, and children who witness such violence between their parents.²⁰

Good practice example

In 2010, the Supreme Court in Norway decided that children who witness domestic violence are entitled to independent legal representation and protection. Therefore children in domestic violence cases are deemed to be victims of violence and not just witnesses. This decision has also affected the police's priorities in terms of who is interviewed in a domestic violence case. As a general rule, where there has been violence and abuse in a family, the police try to interview all the children. The court's decision means that children under 18 who witness repeated physical and psychological violence in the family have an independent protection and are also entitled to redress from the family member who exercises violence (Article § 219, the Norwegian Penal Code).

3.2. Consequences for children exposed to domestic violence

Research in the last 30 years has focused primarily on women as victims, and secondly on men as perpetrators. Over the last decade, however, research on children exposed to domestic violence has increased exponentially. Despite this, researchers agree that it is only recently that the consequences of being exposed to domestic violence have begun to be understood. During the last 10-15 years the majority of research on this topic was focused on the emotional and behavioural consequences for the individual child. A large number of studies concluded that exposure to domestic violence has strong adverse consequences for children, resulting amongst other things, in raised levels of aggression, depression, anger, anxiety and difficulties in connection with learning.

According to Carolina Øverlien from the Norwegian Centre for Violence and Traumatic Stress Studies, the impact on children of exposure to domestic violence is greater than what had previously been understood. She states that the research community must spread this message to professionals in the field and to policy-makers. She concludes that there is clear evidence to support the findings that children exposed to domestic violence are at increased risk of being victims of child physical and/or sexual abuse, and that abuse directed at the women in the family greatly increases the risk of maltreatment and abuse of the child.²¹

Being exposed to violence can have equally serious consequences on physical health as well as on mental health. Studies indicate that those who have been victims of violence are at a higher risk of developing chronic illnesses such as asthma, fibromyalgia and chronic bronchitis (Hjemdal, Sogn & Schau; 2012)²².

Key messages

- ▶ Children who are exposed to violence face many challenges and risks that can last throughout their lives.
- ▶ There is increased risk of children becoming victims of abuse themselves.

20. For more on how the Istanbul Convention addresses children as victims and as witnesses, please refer to Section 2.4.

21. Children Exposed to Domestic Violence, Conclusions from the Literature and Challenges Ahead, 2010.

22. Hjemdal, O. K., Sogn, H., Schau, L. (2012): *Vold, negative livshendelser og helse. En gjennomgang av data fra regionale helseundersøkelser*. NKVTS rapport 1/2012. Oslo: Nasjonalt kunnskapssenter om vold og traumatisk stress. For more on the consequences of domestic violence, please refer to Section 1.7.

3.3. Protection, prevention and support for children

It is important to increase the competences within the judicial and law enforcement system when it comes to this topic. Organising seminars and developing local competences with checklists, guidelines and best practise are good ways of raising awareness.

The Istanbul Convention calls on State Parties to conduct or promote awareness-raising campaigns on the different forms of violence it covers, including domestic violence. It specifically states that such campaigns should show or emphasise the consequences of domestic violence on children (Article 13, paragraph 1).²³

Furthermore, the Istanbul Convention highlights the importance of finding holistic solutions which avoid secondary victimisation. This requires judges to take into consideration any known incidents of domestic violence when they decide custody or visitation rights (Article 31). Also, when it comes to protection and support services the Istanbul Convention requires all measures of protection to take into account the relationship between victims, perpetrators, and children in their wider social environment. The aim is to avoid a situation where victims and their needs are addressed in isolation or without acknowledging their social reality (Article 18). Measures taken in protection of an abused mother, that is, moving her and her children to a shelter far away, will often mean interrupting the children's schooling or uprooting and isolating children.

Some police officers and other professionals working in the judiciary often find it difficult to speak to children involved in these cases. This can be prevented by developing checklists on how to speak to children. For example, if the police know that there are children present at the crime scene it is good practice to decide which officer is in charge of speaking to the children. This officer should, if possible, concentrate only on talking to the child. The manner in which the child is approached as well as the use of words has to be adjusted to the child's age and development.

When police officers are at the scene of a crime, children need special attention. Adults' statements that children have not been involved (as primary or secondary victims) should not be taken for granted. Police officers should talk to the children! It is essential that police officers see each child as an individual with his or her own rights. This could represent the child's only chance to tell someone about their situation. If possible, police officers should give positive closure to children involved when the police are finished at the crime scene. Police officers should also try to give them information on what will happen next (adjusted to the child's age).

Articles 22, 23 and 26 of the Istanbul Convention, call for further specialist support for children exposed to domestic violence, based on their needs. This includes age-appropriate psychosocial counselling and respect for the best interests of the child. It is also highly recommended that there should be a second advocate available for supporting the victim's children. It is important to ensure that children involved both directly and indirectly in domestic violence cases are afforded special protection measures at all stages of investigations and judicial proceedings. Children should also be offered support in parallel with the mother.

Key messages

- ▶ Child victims and witnesses of domestic violence should be offered specialised services which take due account of their rights and needs.

3.4. The reliability of children's interviews

Various circumstances influence whether, and the extent to which, a child is willing to or capable of giving evidence during a police or judge interview. These include the sum of the child's gained experience, the child's stage of maturity, and the time that has passed from the moment the incident occurred to the moment the child tells someone about it. Furthermore, the way in which professional adults (for example, the interviewer) and the child's closest caregivers behave towards him/her will also have an impact.

When children are witnesses in violence and sexual abuse cases, the following questions about children's reliability are central:

- ▶ to what extent do children recall strong emotional experiences?
- ▶ can or will the children talk about such experiences?

23. For more information please see: Karin Heisecke (2014). *Raising awareness of violence against women: Article 13 of the Istanbul Convention*. Strasbourg: Council of Europe. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e1f1>

- ▶ to what extent are children susceptible to pressure from an adult potentially leading them to give a false account?

In the past, there was a perception, especially within the police and in the legal system that children in general were not reliable witnesses. There is no scientific evidence to believe that children are less reliable than adults as witnesses. We know today that children generally do not make up stories about violence and sexual abuse. Factors that can influence the child's reliability can include:

- ▶ conditions influencing the child's communication with an adult (such as exposure and embarrassment);
- ▶ facts or circumstances in connection with the assault or abuse (for example, threats from the perpetrator);
- ▶ individual responses to the violence and the abuse.

Children exposed to domestic violence cases choose different strategies when it comes to handling the violence they have been exposed to. Some become restless and violent, other become silent and reticent.

Some issues that can prevent children from speaking about domestic violence may include: loyalty to the perpetrator, shame and blame, not having been able to stop the violence, fear of the consequences of speaking out (for example, their father may end up going to prison, they might have to move to a foster home or to an orphanage). It is of utmost importance to be aware of such issues during meetings with children who are exposed to domestic violence. Children have to be approached with a combination of confidence and kindness so that they feel safe about speaking about their experience. Children also need to be met with respect and empathy if they feel that the price for speaking out about domestic violence is too high for them.

3.5. Good practice example for interviewing children

Interviewing children is a complex cognitive process, and you have to give the child time to be able to handle it. Children's cognitive development and language may be delayed if they have been subjected to abuse. There are some particular challenges involved in interviewing children. When interviewing children, it is important to use free narrative and other open-ended questions, as well as specific or focused but non-leading questions. Try to avoid closed questions and explicit questions. Other important tips on how to achieve a successful interview include: phrase structure, organisation of topics, verbal formulations, non-verbal communication and physical facilitation.

It is important to remember that children are not small adults. They have to:

- ▶ Find and retrieve the memories from where they are stored in their memory;
- ▶ Decide whether to tell someone about it or not;
- ▶ Consider the consequences of speaking out;
- ▶ Figure out how to talk about it (very difficult if their vocabulary is limited).

Elements to consider when interviewing children

Pre-schoolers (3-5 years)

- ▶ Do not understand abstract concepts – are very concrete;
- ▶ May be able to answer "who", "what", "how" and "where" questions, but "when" and "why" might be too difficult;
- ▶ Do best with simple sentences;
- ▶ Are usually not good at organising a narrative.

School age (6-12 years)

- ▶ Are beginning to develop an understanding of abstract concepts;
- ▶ Are beginning to understand temporal concepts (passage of time, day, date and time);
- ▶ Still have difficulty tracking pronouns;
- ▶ Still have difficulty with complex questions;
- ▶ Still not mature at organising a narrative.

Adolescents

- ▶ Still developing their language abilities;
- ▶ Still don't understand time at an adult level;
- ▶ Still confused by linguistic ambiguity such as idioms, jokes and proverbs;
- ▶ Can still be confused by long complex questions;
- ▶ They are not yet adults, and especially not in relation to sexuality.

There are different factors that can affect children's disclosure of abuse. Studies based on interviews of child victims, whose abuse has been documented, shows that children either under-report or deny the abuse²⁴. Domestic violence is often associated with shame, guilt, and fear of not being believed. In addition, in an interview situation, the lack of trust in the person conducting the interview will also have an impact.

Suggested activity

- ▶ Trainers may play the following movie clip to participants:
<https://www.youtube.com/watch?v=IOeQUwdAjE0>
- ▶ ReMoved is a movie about a 10 year old girl who navigates her way through the foster care system, after being removed from her home and separated from her younger brother.
- ▶ Trainers may ask participants to discuss the following groups: what effects will the situation showed on the movie have on the girl, both in the near future and in the long term?

In the end, interviewing children is about the attitudes and behaviours of the adult interviewer. Skills such as empathetic communication, effective listening and skilful questioning are all important techniques and it is important that interviewers have received training in these areas.

24. Leander, L., Granhag, P.A. & Christianson, S.Å. (2005). Children exposed to obscene phone calls: What they remember and tell. *Child Abuse & Neglect*, 29, 871-888. Cederborg, A.-C., Lamb, M. E., & Laurell, O. (2007). Delay of disclosure, minimization, and denial of abuse when the evidence is unambiguous: A multivictim case. In M.-E. Pipe, M. E. Lamb, Y. Orbach, & A.-C. Cederborg (Eds.), *Child sexual abuse: Disclosure, delay and denial* (pp. 159-173). Mahwah, NJ: Lawrence Erlbaum Associates, Inc.
Leander, L. (2010). Police interviews with child sexual abuse victims: Patterns of reporting, avoidance and denial. *Child Abuse & Neglect*, 34(3), 192-205.

Section 4: First responders and the role of law enforcement in addressing domestic violence against women

The police are at the frontline of the justice system. It is their duty to prevent and combat crime and enforce laws. They are often called upon to intervene when a domestic violence case is in progress, or shortly after it has taken place. It is their duty to effectively investigate all alleged incidents of violence and conduct all investigations in a manner that respects the rights and needs of all the parties involved.

Domestic violence is especially challenging for the police to deal with, precisely because these crimes occur in close relationships. The proximity between the victims and perpetrators represents a problem for the police at a number of levels. Violent relationships may have been going on for years without anyone knowing about it. In order to make a criminal case the police often have to penetrate a wall of shame, guilt and close ties to the perpetrator. It is also challenging for the police to deal with a tragic, complex and sometimes confusing life story, and simultaneously document and transform it into a written report as a basis for a criminal case. It is well documented that the police experience powerlessness, frustration and despair in dealing with family conflicts, which probably can be traced to lack of knowledge and understanding of this reality.

Greater knowledge about the dynamics of domestic violence against women may assist first responders to respond in ways that are more useful and supportive to the victim. It can also help them understand why even with their best attempts to intervene they might be met with resistance from the victim and be required to make repetitive interventions in one family. Acquiring this knowledge can also hopefully create an understanding of the potential benefits of intervening; namely that police attitudes and responses can have a dramatic impact on the ensuing developments, including the prevention of future violent acts and the protection of victims.

For many victims a meeting with the police may represent the only opportunity to break a pattern of repeated violence. An emergency call to the police can be the culmination of a series of mental, physical or sexual acts of violence. If the police patrol (first responders) only focuses on re-establishing the “peace and quiet”, the victim may be in danger of being exposed to new criminal cases within a short time.

The police, through their response to domestic violence, have a significant role to play in improving the lives of all women. In addition to how they respond to incidents and what measures are taken to protect women, they can also advise and ensure greater access to various services such as shelters, counselling and legal assistance.

The police should be able to follow high quality guidelines in meetings with people exposed to domestic violence, independent of the victim's sex, age, ethnic background, sexual orientation, social status, etc.

Suggested activity

- ▶ In order to develop a shared understanding among participants, trainers can start the training with a brainstorming session to create a list of acts that can constitute domestic violence against women. In order to do so, trainers start the exercise and ask each of the participants to share their ideas randomly or in turn. Ideas put forward should not be criticised or discussed, but participants may build on ideas voiced by others. The following two questions should guide the brainstorming session:
 - What does the term “domestic violence” mean to you?
 - What acts qualify as “domestic violence” for you?
- ▶ The trainer writes down each answer on a flipchart in the order they are given without making any comments, notes or questions. After discussing the ideas, the list is posted on the wall so that it is visible throughout the training.

4.1. Criminal proceedings

It is during the initial phase of a domestic violence case that the main basis will be established for further investigations, and that the first police patrol at the scene of the crime plays a key role. Achieving the best possible result requires knowledge from all those involved. Police officers that are involved in these cases should have sufficient knowledge to understand the difficult situations that victims of domestic violence can experience.

The fact that domestic violence is generally repeated means that it is essential to carefully document every single incident. For the attending police officers, such information may help them to prepare in case there is another call for help in the future. When it comes to criminal prosecutions, the information, documents and evidence gathered provide a foundation ensuring that, within criminal proceedings, the full extent of the attacks is chronicled and can be assessed.

As has been already mentioned in Section 1 of this learning resource, throughout Council of Europe member states domestic violence is rarely reported to the police. For example, the European Union Agency for Fundamental Rights 2014²⁵ survey showed that in total, victims reported the most serious incident of partner violence to the police in only 14% of cases.

4.2. First responders

Receiving initial information

The police usually receive information about a domestic violence case when a victim reports the violence at the local police station, through a report from another public authority or by referral from emergency helplines.

Victims that go to the local police station and want to report an incident of domestic violence are very often in a vulnerable situation and must be treated with dignity, respect and sensitivity. The police need to ensure that meeting with a public institution (police) does not lead to secondary victimisation.

Emergency calls; the top priority with any police response is to protect all of the people present at the scene of the crime from injuries and any further threats, and to save lives. This relates both to victims, children, witnesses and perpetrators.

25. European Union Agency for Fundamental Rights (2014). *Violence against Women – An EU wide survey. Results at a glance*. Luxembourg: Publications Office of the European Union. Available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf

Before arriving, on their way to the crime scene, police officers should remember to clarify the following with the emergency central:

- ▶ the reason for the operation;
- ▶ people involved (number, names, whereabouts, how to contact them, special needs (for example, in the case of migrants, persons with a disability), presence of any children, influence of substance or alcohol abuse);
- ▶ whether the perpetrator is currently present or absent;
- ▶ description of the perpetrator;
- ▶ existence and possibly the severity of any injuries;
- ▶ previous history of domestic violence (and other offences);
- ▶ already established protective orders for one of the parties;
- ▶ potential possession of firearms.

The dynamic nature of policing operations demands that this information must be updated constantly. On the basis of this information, the relevant police officers can prepare themselves mentally for the operation and decide what approach to adopt before they arrive at the crime scene. Before entering the crime scene, it must be clear who will be responsible for which tasks.

Arrival at the scene/initial response

The police have a unique possibility to uncover domestic violence. Uncovering domestic violence is detrimental to breaking patterns and in this way preventing future violence. Children are extremely vulnerable and depend on the ability of the police to handle these cases.

It is a central task for the police to prevent the victim from being exposed to further violence. In this regard, the safety of the victim is of utmost importance.

Key messages

- ▶ Success will often depend on decisions and action taken during the initial phase of a domestic violence case. The initial phase is the basis for further investigation, and first responders play a key role in this regard.

Arrival at the scene:

- ▶ The police need to introduce themselves and show their identification;
- ▶ Assess the situation, get an overview of the situation, ask clarifying questions;
- ▶ Check whether any first aid is required and/or whether an is needed; provide first aid if necessary;
- ▶ The first responders need to explain why they are there and if necessary (different laws in different countries), request a warrant to enter the home and check that all is in order;
- ▶ Divide the parties;
- ▶ Think about your own safety, the safety of the victim and other people who may be present;
- ▶ Identify and secure any weapons;
- ▶ Separate the people present into different rooms, ask questions out of sight and out of earshot from one another.

Victim:

- ▶ Make the victim aware of her rights and duties, including the right to legal assistance;
- ▶ Remember to ask open-ended questions while taking the victim's statement; "Tell me what happened" (physical/mental, previous episodes – who knows?); NB: this can be our only chance to receive information! Also bear in mind fresh memories (memories are "polluted" under the influence of talking to family, friends, etc.);
- ▶ Describe the state of mind, presence of intoxication, injuries. Take photos and/or describe possible injuries;
- ▶ Assess confiscation of clothes and other items (for example, clothes, cell phone) for evidence;
- ▶ Has the victim changed clothes?;
- ▶ Check whether there are any legal options for a measure to avert danger (ban on entry/protection order, arrest/taking into custody, dismissal);

- ▶ If the victim indicates that she wishes to leave the residence, help her to make contact with family or friends, provide information about protection orders and support services such as shelters (including the possibility of escorting her), etc.;
- ▶ Accompany the victim;
- ▶ Ask if there are children present;
- ▶ If possible, make use of a recording device.

Children:

- ▶ Are there any children present?;
- ▶ Take children to a safe place;
- ▶ Agree on who will talk to the children, introduce yourself, tell them why the police are present, talk to them in a manner that is appropriate for their age;
- ▶ It is very seldom that the children are asleep, in approximately 50% of the cases they are not sleeping even if it appears so;
- ▶ Note: in cases where the mother is exposed to violence, there is approximately a 50% risk of the children in the family being directly exposed to violence²⁶
- ▶ As far as possible, try to not use the children as interpreters;
- ▶ Wherever possible do not use any force in the presence of the children;
- ▶ Remember to ask open-ended questions ("Tell me what happened...");
- ▶ Describe the children's state of mind/condition/behaviour;
- ▶ Describe or take photos of possible injuries.

Perpetrator:

- ▶ Make the perpetrator aware of his rights and duties;
- ▶ Give the perpetrator the opportunity to outline what has happened from his point of view, write this down, remember to use open-ended questions;
- ▶ Assess confiscation of clothes and other items (can they be used as evidence?);
- ▶ Describe or take photos of possible injuries;
- ▶ Assess whether it is necessary to arrest the perpetrator;
- ▶ Describe the perpetrator's state of mind, possible intoxication and injuries.

Examination of the crime scene/securing and gathering evidence:

- ▶ *"Is what you are told consistent with what you see?"*;
- ▶ Secure the crime scene by restricting access and providing support to people present;
- ▶ Are there any signs of a fight in the house/apartment? Document and describe any injuries that may have been inflicted, the condition of the house/apartment (even if the house/apartment is clean, negative information is also important), take note of any unusual behaviour of the parties involved or anxiety among the children, note down any spontaneous statements;
- ▶ Mess, dirt, broken/damaged items, torn off hair;
- ▶ Has the crime scene been cleaned up? Has the victim or her children changed clothes?
- ▶ If necessary, check the rubbish bin;
- ▶ Any signs of child neglect – describe and document with photos;
- ▶ Confiscate evidence, such as:
 - cell phone;
 - diaries, notes, letters – either from the suspect or written by the victim and detailing past acts of abuse and violence;
 - broken household items, indicating violent incidents;
 - prior police reports;
 - other reports or statements from services involved in past incidents of violence;
 - medical journals (used only with the permission of the victim);
 - criminal record, internet, and other forms of electronic evidence.

26. Mossige, S. & Stefansen, K. (2007). Vold og overgrep mot barn o gunge. En selvrporteringsstudie blant avgang selever i videregående skole. NOVA Rapport 2007. Oslo: NOVA.

Assessments (the police need to make some assessments at the scene):

- ▶ Contact/inform Children's Welfare Services?
- ▶ Do you need forensic experts?
- ▶ Risk/protection measures?

Witnesses:

- ▶ Establish if there are any witnesses (record their statements as soon as possible). What have they seen/heard?
- ▶ Make them aware of their rights and duties.

Supplementary work:

- ▶ Draw up different reports (for example, report from the scene of the crime, interview/statement of the involved parties (victim perpetrator, witnesses), confiscation report, report on possible arrest, declaration of consent, report to child services, etc.)
- ▶ Reporting to Children's Welfare services?
- ▶ Other tasks?

Suggested activity

- ▶ Trainers may use the case study from "Hand-out 6 – Initial phase/First responders" in order to discuss initial response by the police:
 - Trainers divide the participants in groups of four, and ask the groups to discuss the case study by answering the questions included in the hand-out.
 - Each group then presents their discussions to the other groups.

On-scene investigation

Depending on the situation, first responders should conduct a comprehensive inquiry. Every incident should be documented. This ensures that full and accurate records are kept of every incident no matter what response is taken by the police.

First responders (police officers) should conduct an on-scene investigation:

- ▶ gather and preserve evidence in accordance with national police investigative procedures (see above: *Examination of the crime scene*);
- ▶ make detailed notes;
- ▶ conduct initial interviews with all those involved (victims, suspects, witnesses);
- ▶ complete a detailed incident police report, regardless of whether any charges will be made.

Every response to a domestic violence call should include an initial investigation of the incident. This demonstrates to the perpetrator and the community that the police and the government take all incidents of domestic violence seriously. The first responders must find the material which constitutes evidence and have the knowledge to recognise the potential of the evidence found. Evidence can be either physical (such as weapons, documents and photographs) or verbal (such as statements).

Key messages

- ▶ The safety of the victims while holding perpetrators accountable for their actions should be ensured at all times.

Interviewing victims (at the scene)

Police conduct interviews of victims to ascertain what happened. The verbal statements/interview from the victim and witness(es) are often the most important pieces of evidence in domestic violence cases.

After experiencing abuse, victims of domestic violence are in a poor physical and psychological state. However, whenever possible and reasonable to do so, efforts should be made to interview the victim

immediately. On the one hand, victims are usually more willing to make statements immediately after an attack than when the interview takes place after a few days. On the other hand, statements made by the victim (and the witnesses) may provide important pointers in respect of risk assessment and safety planning for the particular case.

That being said, police officers interviewing the victim must adopt a particularly sensitive and empathetic approach in order to prevent secondary victimisation (see Section 1.13 on secondary victimisation). Interviews should, if possible, be conducted in a quiet room without any disruptive factors. If the victim does not speak the national language or has difficulties to communicate, interpretation should be provided. This is in line with the Istanbul Convention's requirement of providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence (Article 56).

First responders need to be aware that they are there to help, not to judge, and that victims should at all times be treated without prejudice or discrimination. Interviews of victims should only be conducted once the immediate safety of the victim has been ensured and, if applicable, she has been informed of her right to refuse to give a statement or to provide one at a later date.

Police officers should bear the following points in mind when interviewing the victim:

- ▶ during the interview act as sensitively and sympathetically as possible towards the victim;
- ▶ if possible, provide the option of the interview being conducted by a person of the same sex;
- ▶ avoid using any specialist terminology or explain what it means;
- ▶ rebut any self-reproaches and doubts;
- ▶ avoid making valuations or judgements;
- ▶ give the victim the option of having a person they trust (including a lawyer) present;
- ▶ explain to the victim that, during the interview, it will be necessary to ask detailed questions, some of which may be of an intimate nature;
- ▶ allow sufficient time for the interview situation, give the victim enough time to give a free account, listen attentively (do not interrupt, bear silence) and interview the victim using open-ended questions ("tell me what happened..., describe and explain/what happened, who, when, why, the reason for it, what did you think when you did it, what was the purpose") about:
 - the specific incident and the background leading up to the crime;
 - abuses — if necessary aim for forensic documentation;
 - details about the perpetrator: employment status, alcohol and or/substance abuse, mental illness, stress levels;
 - presence of weapons;
 - presence of children;
 - other damage;
 - issues regarding duty of confidentiality;
 - the person's willingness to consent to their details being passed on to an intervention centre/ support service for victims of domestic violence;
 - an alternative address (for written correspondence, summons, other measures);
 - the history of abuse (previous use or threat of violence with weapons or similar objects, access to weapons or other dangerous objects);
 - controlling behaviours, such as isolation;
 - escalation of violence;
 - People (friends, acquaintances) who should be notified and may be able to assist the victim.

Summarise what the victim has said: the first and the last time the violence occurred, worst experience, visit(s) to doctors, whom has the victim told about the violence (witnesses?) how has the violence developed from the beginning to the present, where the violence occurred and what triggered the perpetrator. Where were the children while the violence occurred and what have they experienced or have been exposed to.

In an ideal case, the victim's statements will be recorded on video or tape. If this is not technically possible or the victim does not wish this to happen, taking detailed notes is a possible alternative.

Victims of domestic violence may not behave like other victims. First responders should understand and be prepared for a range of possible responses. The ambivalence, denial and helplessness that often characterise abuse victims may be learned behaviour that has allowed the victim to survive the abuse.

Range of possible victim responses

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

Suggested activity

- ▶ Trainers ask participants to watch the following movie (7.43 minutes):
<https://www.youtube.com/watch?v=AtyhscakusY>.
- ▶ Trainers divide participants in groups of four and use the following questions as a basis for discussions:
 - What did you think about the movie?
 - Is there something you would have done in a different way?

4.3. Investigations: building a good case

As already mentioned women exposed to domestic violence are in a vulnerable situation and need to be met with professionalism and care. There is an increased risk of new violence in connection with ending the relationship and at the same time contributing to the police investigation.

Safety and trust are important conditions for victims if they are to co-operate with the police, and these experiences are crucial for the final result of the case. Women exposed to domestic violence have different levels of knowledge about the various possibilities and limitations of the police and what they are able to do. It may be necessary to inform victims about the follow-up given to their complaint and what role the police investigation has in the follow-up. Providing such information to the victim as early as possible during the initial phase will help to clarify what can be expected from the police.

It is important that the police, as early as possible, form a shared understanding and make a plan on how to conduct a good investigation. In doing so, the priority order of the various steps in investigations should be considered, and notes should be made on the different tasks in a log.

In an early phase of the investigation, the police have to check if there is any need for securing evidence, looking into the need to seal the crime scene, need for safety (risk) measures, and need for a protective order. Another important issue is to have a good and continuous dialogue with the prosecutor during the investigation.

In many cases victims withdraw their cases, and do not want to co-operate with the police during the investigation. It is of great importance that the police investigate broadly and make sure that the victim's statement is supported by other statements and evidence.

Suggestions for building a good case:

- ▶ Good routines (guidelines/checklist/manual)
- ▶ Planning (investigation plan)
- ▶ An active investigator and prosecutor
- ▶ Co-operation between police and the prosecutor

- ▶ Interviews of the involved parties/children/witness(es) (remember to check the quality of the information). The statement should include both positive and negative information about the violent incident. See below for suggestions on the content of the victim's statement.
- ▶ Obtain relevant information from relevant collaborating partners (health, child services, women's shelter, other support services, etc.)
- ▶ Motive
- ▶ Reconstruction
- ▶ Untraditional investigation methods (for example, wire-tapping, covert audio surveillance and tracking of cars)
- ▶ Arrests/searching/confiscation
- ▶ High quality and good progress
- ▶ Secure evidence
- ▶ Assess risk of new violence (risk assessment tool)
- ▶ Measures for protection
- ▶ Structured co-operation with relevant stakeholders
- ▶ Provision of information to the victim– be realistic when you inform her about how the case will proceed
- ▶ Provision of information to the victim regarding other public and non-public services

Interviewing the victim (not at the scene):

Suggested activity

- ▶ The following activity can help participants understand how difficult it is to talk about intimate and private issues, but also what is important for victims to disclose:
 - Trainers ask the participants to turn to the person next to them and share with that person their first sexual experience in detail.
 - The trainer can ask the following feedback questions: How did you feel? Why? How might a victim of domestic violence feel telling a complete stranger about a rape or sexual abuse?
 - Trainers summarise this activity with the following question: What would we need as victims in order to tell this story to the police? Time: approximately 20 minutes.

The interview with the victim is very important; the victim statement can be one of the most important information sources in the case.

If it is necessary for more than one interview with the victim, whenever possible the same police officer should be used, unless there is special reason not to do so. The police interviewer should have basic knowledge about the possible reactions and needs of traumatised victims. If possible, the interview should be recorded. The interview should also follow the police method for interviews.

Suggested content in the victim statement:

- ▶ The police need to inform the victim about her rights and duties
- ▶ Description of herself (as a person, profession, interests, background, family, children, etc.)
- ▶ Relationship to the perpetrator
- ▶ Description of the perpetrator as a person
- ▶ Description of physical and psychological violence in general (use a timeline as a support for the victim as well as for the police interviewer and for the investigation)
- ▶ How did the violence start? What triggered the violence or the threats? Is intoxication involved?
- ▶ What type of violence did the victim suffer?
- ▶ If there were threats, what kind?
- ▶ How many episodes of violence have there been?
- ▶ How has the violence developed (the first, last and the worst episode)?
- ▶ How does the perpetrator behave before and after an episode of violence – the cycle of violence?
- ▶ Collect information concerning the risk of new violence.
- ▶ Has the victim tried to leave the perpetrator and does the perpetrator have access to firearms or other weapons such as knives?
 - Description of various episodes of violence – collect verifiable information (who, what, where, when and cause).

- Description of the impact the violence has had on the victim (for instance; financial impact, lasting physical injuries, mental injuries, strategies for avoiding new violence or memories of violence and, how is the victim doing today).²⁷
- Secure evidence and witness(es); any witness, has the victim told health services, a shelter, family and so on, anyone that has asked her, has the victim undergone a medical examination, are there any photos of the injuries, does the victim have a diary, letters, cell phone text messages, internet correspondence, medical journals and so on.
- Children; where have they been, and what do they know, has the violence been an issue between the parents and the children, have they witnessed (seen/heard) the violence, have they told anyone, consequences for the children?
- Protective measures; interview the victim in order to assess suitable protective measures/risk assessment.
- If possible, inform the victim of a contact person within the police.

Interviewing the suspect:

The issues on which the police interview should focus on depend largely on the case, how the suspect has dealt with the accusation and the type of evidence collected. Police should assess whether they should interview other persons (for instance witnesses) involved in the case, before interviewing the suspected.

Suggested content in the suspect's statement;

- ▶ His rights – duties.
- ▶ Description of himself (as a person, profession, interests, background, children, etc.).
- ▶ Ask the perpetrator to describe the victim (as a person, profession, interest, background, alcohol/ drug abuse, children, crime, etc.). Relationship to the victim.
- ▶ If the suspect admits the violence, ask him about the general information before he is asked to describe the different episodes of violence.
- ▶ Description of each episode of violence; as much information as possible so that the police officer can control/verify.
- ▶ Secure evidence/witnesses/children.
- ▶ Assess if there is a need to interview children.
- ▶ If the suspect denies the violence, he should be interviewed in detail about his alibi and the victim's motive for giving a false report.

Suggestions for other steps in investigations:

- ▶ Door to door action (neighbours may have important information).
- ▶ Search/confiscation/arrests must be assessed during the investigations.
- ▶ Need for new police reports from the first responders.
- ▶ Securing evidence/cell phone/documentation by photo.
- ▶ Collect sound log from emergency central.
- ▶ Previous police reports.
- ▶ Collect information from doctor, hospital, women's shelter, and psychologist.
- ▶ Experts' statements.

Suggested activity

- ▶ Trainers should distribute "Hand-out 7 – Case study: Investigation plan" and "Hand-out 8 – Investigation Plan" and ask participants to make an investigation plan (Time: approximately 30-40 minutes).

Good practice example

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

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

²⁷. Please refer to Section 1.7 for more information on the consequences of violence.

4.4. Ensuring the victim's safety/Risk assessments

Safety is essential for victims of domestic violence against women, and the police need to focus on safety planning from the very beginning of a domestic violence case. When the police come into contact with a victim exposed to domestic violence their main task is to ensure victim safety. The police have a range of measures they can use, from advising the victim on practical safety measures they can implement themselves, such as removal of nameplate on the door, peephole in the door, safety locks, using different routes to and from work, locking car doors when driving and so on, to more comprehensive measures such as risk assessments and protection orders. The need for a protective order and other safety measures must be assessed on a regular basis. It is important to remember that there are several situations that can raise the level of risk, such as separation, a court hearing, child contact, etc.

Over the past years several countries have started to use more systematic and professional risk assessment tools. The aim of using risk assessment tools is to prevent new violence. Statistics show that domestic violence is a serious and actual problem (see Section 1.3). In Nordic countries (Finland, Denmark, Iceland, Norway and Sweden) for example, more than 50 women are killed due to domestic violence each year²⁸. This has been the background for using different tools for risk assessment in the Nordic countries.

The aim of risk assessment is to outline the threat of violence, to estimate the seriousness of the threat, and to foresee possible consequences. The main goal for risk assessment at the individual level is to prevent, not just predict, a possible act of violence. Based on the results, measures can and should be taken to minimise the risk of violence. Using systematic and professional risk assessment tools can help the police to uncover lethal and extremely dangerous behaviour.

The assessment of risk and identification of safety measures should be conducted continuously: from the first meeting with the victim all the way to a possible sentence (sometimes also in connection with the perpetrator's release from prison). Unfortunately, some of the victims will always live with threats. The risk assessment has to be conducted in close co-operation with the victim.

Key message

- ▶ The overall results are positive where risk assessment tools have been implemented.

All police officers that come into contact with domestic violence cases should have a basic knowledge about risk assessment. It is recommended that first responders specially focus on risk factors such as:

- ▶ violence;
- ▶ threats;
- ▶ escalation;
- ▶ violation of protection orders;
- ▶ alcohol and/or substance abuse;
- ▶ psychological problems.

These risk factors can include strengths that are crucial for the various protection measures imposed by the first responders when they are at the scene of the crime. These factors are also important when it comes to the kind of investigative steps that will be taken.

It is important to remember to ensure the safety of and need for protection measures for children involved in domestic violence cases at all stages of investigation and judicial proceedings.

Suggested activity

- ▶ Trainers ask participants to read and discuss "Hand-out 10 – Risk assessment tool: SARA".
 - Guiding questions for discussions:
 - Do the police need a standardised risk assessment tool?
 - Challenges in using a risk assessment tool: positive and negative aspects?
 - A supplement?
 - Multi-agency work: advantages and disadvantages?
 - How can we increase professionalism?

28. <http://norden.diva-portal.org/smash/get/diva2:711031/FULLTEXT01.pdf>

4.5. Co-operation – “pulling together”

Multidisciplinary co-operation and interaction on domestic violence cases is vital so that victims can receive the assistance and services they are entitled to. While this learning resource focuses on law enforcement and the justice sector, it is important to emphasise that these sectors are part of a larger systemic response to domestic violence. Co-ordination can take place on a number of levels. Law enforcement and the judiciary need to collaborate with child services, health, education, social services as well as non-governmental organisations to ensure an integrated response to domestic violence.

It is important to stress that the police are but one of several actors in the intervention chain. Improving co-operation between authorities and other actors who encounter victims is essential if we are to provide the necessary help and support, and to avoid re-victimisation.

The efforts of the police are crucial in successfully preventing and combating domestic violence. It is important to establish guidelines and effective routines to handle these cases at all levels, from police staff intervening at the crime scene to police staff in charge of the follow-up and investigating the cases. Using guidelines/check-lists/ instructions is recommended so everyone knows what their task is. Establishing binding multidisciplinary co-operation models and resorting to tried and tested routines have proved successful in many countries.

One of the main aims of cross-sectoral or multidisciplinary work is to focus on early intervention and to prevent children from growing up in an atmosphere of violence and conflict.

The police in Norway, for example, have a responsibility to co-operate with other agencies and services in this field. In order for society to be able to prevent domestic violence, it is important that all the actors take their part of responsibility and co-operate taking into account what is best for the victim and the children - so they can be offered an overall service. Establishing or developing close local cross-sectorial co-operation is necessary if the police use a risk assessment tool. Due to the fact that victims have various needs, it is essential that the various services can give differential and co-ordinated assistance and protection to victims with different and complex needs.

Experience indicates that a greater focus on domestic violence leads to a greater number of victims contacting the police and welfare services.

Best practice from Norway

The Norwegian police lists some main points of what constitutes “good policing”:

- ▶ Standardised definitions of domestic violence
- ▶ Consistent intervention
- ▶ Leadership
- ▶ Training of staff
- ▶ Performance monitoring
- ▶ Repeat victimisation approach (risk and threat assessments/SARA)
- ▶ Co-operation with other authorities and non-governmental organisations
- ▶ When a victim wants to withdraw a domestic violence case in Norway the victim has to make an appointment with the investigator and inform why and the background for the withdrawal. The investigator must then write a report. In general the investigator knows the victim and the case best, and is best placed to uncover whether the withdrawal results from pressure or threats towards the victim.

Section 5: The role of the criminal justice system and prosecutors in effectively addressing domestic violence

In line with the due diligence principle, States have the obligation to diligently prevent, investigate, punish and provide reparation for acts of domestic violence against women (see Sections 2.3 and 2.4). As a result, prosecutors acting on behalf of the State have the responsibility to ensure a) a fair and effective response to domestic violence, and b) that cases of such violence are treated seriously by the criminal justice system.

For the most part, the criminal justice system has a powerful role in preventing domestic violence against women and responding to it effectively. It sets the standard for unacceptable conduct and sends a strong message to society that such violence will not be tolerated. When the criminal justice system's response to acts of gender-based violence - including domestic violence - is effective, it can greatly contribute to transformative change in mentalities, attitudes, as well as social and cultural practices underpinning the existence of this phenomenon.

While the main role of the prosecutor is to deal with the criminal aspects of a domestic violence case, it is important for the prosecutor to understand the dynamics of domestic violence and its impact not only on the victim's life, but also on legal proceedings. In order for criminal proceedings to be effective, particular attention needs to be paid to the safety and support of the victim throughout legal proceedings. A victim-centred approach, which focuses on the needs and the empowerment of the victim, should be at the centre of the prosecutor's consideration.

Tip for Trainers!

- ▶ Trainers should start a group discussion on how the dynamics of domestic violence impact legal proceedings in light of the factors below:
 - Victims have most likely been exposed to domestic violence for a long period of time before a case is dealt with in criminal court. As a result, both the victim and perpetrator are likely to have been previously in contact with law enforcement and the justice system (for civil cases).
 - Depending on the history of violence, the victim is likely to suffer from trauma, depression, anxiety or post-traumatic stress disorder as a result of the violence. Victims may also have been exposed to secondary victimisation.
 - The victim can be threatened or intimidated by the perpetrator and feel pressure to withdraw the case out for fear for her safety and/or the safety of her family.

5.1. Safety and protection of the victim

Concern for the victim's safety must lie at the heart of any intervention addressing domestic violence. No matter what actions a prosecutor takes, it is imperative to assess the impact of the measure on the victim's safety and make sure that the risk of further violence is not increased as a result of the intervention.

An important element in ensuring victim safety is risk assessment²⁹. Prosecutors are likely to take a range of actions in a criminal case and it is important for them to know the impact of those decisions on the risk faced by the victim. It is pointless and indeed harmful for a prosecutor to secure a criminal conviction if it increases the risk to the victim. For prosecutors, information about risk assessment can provide valuable background information. Article 51 of the Istanbul Convention makes it clear that, responsibility for assessing and managing the risk of violence should not only rest with law enforcement, but also be carried out in co-operation with all relevant authorities. Risk assessments should always be accompanied with a plan to manage the safety risks a particular victim faces on a case-by-case basis, according to standardised procedures and in co-operation and co-ordination with all relevant actors.

It is important for the prosecutor to know whether a systematic risk assessment has been carried out by the police or other agency, as the fear of retaliation and further violence will have implications for prosecutors.

In order to mitigate the risk of violence and ensure that the victim feels safe, the prosecutor should collaborate closely with other law enforcement agents and service providers, in order to discuss issues related to dangers and risks of further violence to the victim. Where risk assessment/lethality assessment tools have been completed, it is important that the prosecutor understands the implications of the results and uses them to foster dialogue with the victim. This will assist the prosecutor in understanding the larger context and pattern in which the violent incidents took place.

Particular attention and precedence should be given to cases where the available information points to a high-risk situation, including the risk for severe violence and lethality. While victims are usually best placed to report risk factors for lethality, victims often underestimate their own vulnerability to future assaults. Therefore, relying on detailed checklists for risk factors and responding to them immediately in co-operation with all relevant authorities is crucial in order to prevent the escalation of violence leading to severe violence or homicide.

As with any risk assessment, prosecutors should be aware that risk is not static and can change very quickly. There are a number factors or particular circumstances, which can raise the level of risk, such as a separation, a court hearing, child contact, etc. It is therefore good practice to re-visit the issue of risk on a regular basis, so that the prosecutor can re-assess the situation and apply any necessary measures in response to the change of situation. Where prosecutors are permitted to participate in multi-agency risk assessment meetings it can be a useful opportunity to help the prosecutor stay informed of the safety situation of the victim and exchange relevant information with other authorities and agencies, including service providers and child protection services.

While prosecutors are not directly involved in issuing protection orders or barring orders, they should however be aware if the victim has requested such an order, if the order has been issued and if it has been violated by the perpetrator. This is particularly important where the breach of a protection order is a criminal matter. It is of particular importance that co-ordination is ensured between on-going criminal and civil law matters. It can be

²⁹. For more on risk assessment, please refer to Section 4.4.

very confusing and distressing for the victim to have conflicting instructions from the civil and criminal courts. Information should be shared (within the parameters of the law) between the civil and criminal jurisdictions, so that the safety of the victim is kept in view at all times. In cases involving domestic violence, it is important that all legal professionals dealing with the case are informed of any action or developments in civil law and criminal law processes in a timely manner in order to be able to reconsider the level of risk at all stages of the legal proceedings. Civil law measures to protect the victims are discussed in more detail under Section 6.5.

Interviews and hearings linked to investigations and judicial proceedings can also present a danger to the victim as witness and her family. For this reason, the Istanbul Convention foresees a number of measures that should be taken to protect the rights and interests of the victim (Article 56).

The checklist below sets out some of the safety factors that should be considered when prosecuting a case, especially when considering criminal interventions such as protection measures or curtailing the defendant's liberty in any way:

- ▶ the history of the relationship;
- ▶ whether or not the relationship is still on-going;
- ▶ views of the victim on the consequences of proceeding with the prosecution in relation to her safety;
- ▶ details of any risk assessments that have been conducted by the police and the results;
- ▶ police views about the safety of the victim and children, if any, and the likelihood of serious harm; and
- ▶ whether the victim is being supported by an independent domestic violence worker or non-governmental organisation.

Key messages

- ▶ Conducting a thorough investigation, obtaining a complete snapshot of the incident of domestic violence and the context in which it occurred, and ensuring a systematic and exhaustive case evaluation, are key in ensuring victim safety.
- ▶ Given that risk is dynamic and constantly changing, prosecutors should ensure that risk assessments are up-to-date.
- ▶ Prosecutors are better equipped to fully assess the extent of abuse and understand the risks if they situate the criminal incident in a larger socio-cultural and behavioural context.
- ▶ Multi-agency co-operation is essential for conducting effective risk assessments. When determining risks concerning the safety of the victim, prosecutors should co-operate closely with law enforcement, support services and all other relevant actors involved in the intervention chain.

Tip for Trainers!

- ▶ Trainers may use the questions below to trigger a discussion on the effectiveness of measures which are provided for in the national legal framework to protect the victim and/or witness of a domestic violence case:
 - What protection measures are made available within the national legal framework?
 - Are they applied and monitored?
 - What other action could the police and the prosecutor rely on within the current legal framework to increase the safety of victims and secure their interests in the legal proceedings?

5.2. Informing the victim of her rights

The experience of domestic violence is very traumatic for victims and deciding to pursue a criminal justice solution can be very daunting. Navigating the court processes, as a non-legal person, even with counsel can be very difficult for victims. Research shows that well-informed victims are more likely to co-operate.

Besides ensuring that the victim feels safe and that appropriate measures have been taken to safeguard her safety, the prosecutor can support the victim throughout criminal proceedings by taking a proactive approach. While ensuring that the victim gets psychological and medical assistance by well-trained staff is key, the prosecutor can also make sure that the victim is informed of the services available to her and how to

access them. More specifically, the prosecutor can support the victim, as a witness, by ensuring that the case is handled in an appropriate way and with the seriousness it deserves. The prosecutor's role is also to make sure the victim is informed of her rights and legal services, as well as of the progress of the proceedings and the outcome of the case. Providing the victim with the necessary information about her rights and role in the criminal justice system is also likely to increase her trust in the system and contribute to the timeliness of criminal proceedings. According to Article 15 of the Istanbul Convention, victims should be provided with information on where to get what type of help, if necessary in a language other than the national language(s), and in a timely manner, meaning at a time when it is useful for victims. Article 56, further requires that victims be informed – at all stages of investigations and judicial proceedings - of the rights and services at their disposal, and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of the case. Victims should also be informed, at least in cases where the victims and the family might be in danger, if the perpetrator escapes or when he is released temporarily or definitely.

Close co-operation between the prosecutor and other agencies and services available is important in order to ensure that the victims are not further burdened by having to find out what services are available to them and how to access to them. Relevant information should be made easily available to victims by the prosecutor in co-operation with other agencies.

The rights of the perpetrator and the victim must be kept in view at all times. Where there is conflict between the rights of the victim and the accused that conflict must be managed within the boundaries of the law and with consideration for the overall fairness of the proceedings.

Co-operation between the police and the prosecutor is key in terms of building a strong case. Evidence suggests that cases of domestic violence which have been processed in the criminal system as a result of joint efforts between the police investigator and the prosecutor have the best chance of succeeding in court. While the investigator and the prosecutor have independent roles in the criminal justice system, working together as a team from the outset ensures that evidence gathering is done correctly from the beginning. The prosecutor knows what evidence is required and can guide the investigation in the right direction.

As with all professionals dealing with domestic violence cases, stereotyping and negative attitudes based on myths can have an effect on the way police gather evidence and what is considered as evidence (see Section 1.9). Prosecutors should be careful about dismissing a case on evidential grounds, if they find that a “weak” case is the result of discriminatory response to case building. Sharing a common understanding of domestic violence as criminal behaviour and gender-based violence is the basis for an efficient and victim-centred approach to investigating such cases. Prosecutors should avoid making stereotypical assumptions and shift the focus to the perpetrator, by asking themselves why the perpetrator is violent instead of why the victim stays.

The most efficient way of reaching a common understanding of how domestic violence cases should be investigated and built, is to establish operational protocols for law enforcement and prosecutors. Such protocols, service level agreements and memoranda of understanding are strategic level documents, which help to set the direction for the agency as a whole. This will typically be managed by senior officials within each agency.

Checklists are easier to use at an operational level. Local police and prosecutors can identify the issues that they wish to tackle and create joint checklists. Working as closely as this will help to ensure that police gather the necessary evidence for prosecutors to build a strong case.

Good practice example: Joint Crown Prosecution Service and Association of Chief Police Officers Evidence Checklist – England and Wales

The Joint Crown Prosecution Service (CPS) and Association of Chief Police Officers Evidence Checklist is used by police forces and prosecutors in cases of domestic violence. It explicitly states that early and meaningful case building between the police and CPS in cases of domestic violence is crucial to ensure effective prosecutions. It further calls on prosecutors to prepare their case on the assumption that the victim may in the end not support the prosecution. To see the checklist please visit:

- ▶ http://www.cps.gov.uk/consultations/dv_14_annex_a_checklist.docx

Tip for Trainers!

- ▶ Trainers should facilitate a discussion with participants on what kind of information should be included in:
 - a protocol document;
 - a service level agreement;
 - a joint police and prosecutor checklist.
- ▶ The aim of this exercise is to get participants thinking about the strategic and operational aspects of tackling cases of domestic violence and why it is important to have both.

Gender-sensitive interviewing

Applying a victim-centred and human rights-based approach in practice entails that victims of domestic violence are treated with respect, dignity and sensitivity regarding their distressing experience. All communication with victims should be geared towards empowering them to overcome their traumatic experience with violence and threats of violence and enabling them to endure the legal proceedings.

The prosecutor should aim to meet with the victim or the victim's lawyer as early as possible in order to establish rapport with the victim or the victim's lawyer. Checklists can be useful for the prosecutor to prepare for a meeting with a victim and to recall what particular information should be provided to the victim of domestic violence, and how to conduct the interview so that the victim's needs and concerns are taken into consideration. Ultimately, establishing communication with the victim based on trust, respect and the common goal of ending the violence provides the necessary foundation for efficient case processing.

Example of pointers to be considered during the prosecutor's meeting with the victim:

- ▶ the victim's state of mind, as she is likely to be anxious or distressed;
- ▶ the victim's fear of possible repercussions;
- ▶ the victim's concern for the perpetrator;
- ▶ the victim's concern for any children/family members;
- ▶ the victim's fears regarding her financial situation;
- ▶ the victim's fears concerning the possible outcome of the case;
- ▶ whether or not the victim is receiving any kind of support from support services or non-governmental organisations.

Key messages

- ▶ It is important to ensure that victims feel that their voices are being heard. The victim must be provided the opportunity to:
 - express her story;
 - be listened to and have her story accurately recorded;
 - have a positive experience when providing testimony;
 - be able to describe how the violence has impacted her.

5.3. Exercising prosecutorial discretion

There are a number of key points where the intervention and guidance of a prosecutor is very important in terms of giving direction on how cases of domestic violence are tackled. Whilst the police investigate the incidents, prosecutors have the duty to scrutinise the lawfulness and propriety of investigations and the gathering of evidence and finally, decide from a legal perspective whether these are matters that can be put before a court. Perhaps the most significant entry point for a prosecutor is the initial decision as to whether there is a public interest in prosecuting a case of domestic violence. Given the prevalence of domestic violence and the harmful effect it has on the family and on society as a whole, it would appear that the prevailing approach should be to always find a public interest in prosecuting such cases. However, in some instances, a prosecutor may find that on balance, the public interest is not served by prosecuting a perpetrator.

When deciding whether to prosecute or not, the prosecutor should assess whether or not the evidence is sufficient to support the prosecution and whether a conviction is likely. In determining the adequacy of the evidence for a case, prosecutors should base their judgement on the strength of the evidence and not be swayed by other extraneous and irrelevant factors. Studies indicate that prosecutors often include in their assessment irrelevant characteristics of the suspect and the victim. Therefore it is important that prosecutors are aware of any bias in how they assess the victim's character, behaviour and credibility and ensure that their assessment is not based on stereotypes of "genuine victims" and "appropriate behaviour".³⁰

Particular attention should be paid on how to assess the following:

- ▶ the perpetrator-victim relationship;
- ▶ the victim's characteristics;
- ▶ the suspect's characteristics;
- ▶ the case's characteristics.

Tip for Trainers!

- ▶ Trainers should facilitate a discussion on how personal attitudes and preconceived ideas related to the characteristics of the parties may influence the evaluation of the adequacy of the evidence.
- ▶ Trainers should also facilitate a discussion around the reasons why it would not be in the public interest to prosecute a perpetrator of domestic violence. The factors listed below are not exhaustive and in deciding that it is not in the public interest to proceed, they should be typically not be taken in isolation.

Some public interest factors to be considered:

- ▶ the offence seems to be a minor, one-off incident;
- ▶ the perpetrator has no previous convictions;
- ▶ the age of the perpetrator (very young or very old);
- ▶ the health of the perpetrator (very ill, including mental health conditions).

5.4. Developing a prosecution strategy and case building

An important consideration in tackling cases of domestic violence is to ensure that all partners are identifying cases correctly. One of the easiest ways to do this is to have a definition that all partners use. In other jurisdictions, identifying cases under the legal definition of "domestic violence" has proved to foster good co-operation between law enforcement and prosecutors. Flagging the cases helps with the case building and evidence collection since it provides a common framework for both sides. It is also helpful in terms of developing a plan of action for the investigation and case building. Finally, having a definition is helpful in terms of collecting data on the outcome of domestic violence incidents and charges.

Although domestic violence cases are now being given greater priority within the criminal justice system, they are still subject to the rules of evidence and procedure laid down in the law. Therefore, police and prosecutors are still bound to operate within the current legal framework. Sometimes there are restrictions contained in the law which make it difficult to apply the victim-centred, human rights-centred approach to domestic violence. In such circumstances, prosecutors should be creative in finding ways to work within the restrictions they operate with.

The main challenge to building strong evidence in a domestic violence scenario is the fact that in a large number of cases, the victim ends up not supporting the prosecution. It could be due to threats, duress, secondary victimisation, a lack of support or reconciliation. Whatever the reason, prosecutors are faced with the challenge of building a case without the main source of evidence. These crimes are often committed in private, with no witnesses. However, where reconciliation is put forward as the reason for the victim no longer supporting the case, then enquiries should be made in order to ascertain the truthfulness of the situation. The 'reconciliation' could be as a result of threats or duress. In certain circumstances these threats or duress could give rise to separate criminal proceedings.

In line with Article 55 of the Istanbul Convention, the decision to prosecute should not be wholly dependent on the decision of the victim to participate, if there is sufficient evidence to suggest that a crime occurred. The purpose of *ex officio* prosecution is to ensure that domestic abuse is processed by the courts, and subsequently,

30. Ibid.

perpetrators are brought to justice with or without the participation of their victims. In particular, acts which result in severe bodily harm or deprivation of life should be addressed promptly and directly by competent authorities without placing the onus on the victim to initiate such proceedings and to secure convictions.

While proceeding without the victim's testimony is possible, it requires prosecutors to be creative about other sources of evidence. For example, evidence from other corroborating witnesses, independent medical evidence, photographic evidence and evidence of police officers who attend the scene. A joint police and prosecutor checklist of evidence can also be a useful tool here.

Charges

Prosecutors should give careful consideration to the offences which the perpetrator will be charged before the court. As highlighted previously, domestic violence is a pattern of controlling and coercive behaviour and the prosecution charges should properly reflect the abusive behaviour of the perpetrator. Once it has been ascertained that a case can be put before the court, prosecutors should ensure that the charges put before the court:

- ▶ reflect the seriousness and extent of the offending;
- ▶ give the court adequate powers to sentence and impose appropriate post-conviction orders;
- ▶ enable the case to be presented in a clear and simple way; and
- ▶ reflect the impact of the alleged offence(s) on the victim.

Suggested activity

- ▶ Trainers distribute "Hand-out 11a - Ruxandra and Alexandriu (Prosecutors)" to participants. The purpose of this case study is to embed the learning so far in relation to the public interest, evidential considerations, appropriate charges and the victim's withdrawal from the case. The hand-out contains questions to guide discussions.
- ▶ If time allows it, trainers may distribute "Hand-out 11b - Ruxandra and Alexandriu (Additional information for prosecutors)" in order to add more complexity to the case.
- ▶ "Hand-out 11c – Ruxandra and Alexandriu (Judges)" should be used to train judges.
- ▶ "Hand-out 11d – Ruxandra and Alexandriu (Police)" should be used in police trainings.

5.5. Efficient case management

Once a case of domestic violence is judged to have sufficient evidence and that it is in the public interest to prosecute, then issues of case management and criminal procedure need to be addressed. It is important that these types of cases be handled as quickly as possible because any undue delay increases the chances that the victim will withdraw her support for the prosecution. Risk and safety are two core issues throughout the prosecution, and case management processes must take account of both these issues. The prosecution and police have been found to be most effective when they adopt a 'prosecution team' approach. This involves high levels of inter-agency communication to ensure that the strongest possible case is presented. Involving the court, by having at least one case management conference, further increases the chances of success.

5.6. Pre-trial considerations

Where a case is listed for trial, it is important that pre-trial issues are dealt with appropriately and within the specified time limits. Apart from potentially being an intimidating experience for victims of domestic violence, the pre-trial period represents an increased risk for them, in particular in situations where the perpetrator is not in custody nor supervised before the trial. Safety measures need to be given particular attention as victims are likely to experience further intimidation and retaliation by the defendant. Available protection measures should be applied timely and monitored to avoid any further harm to victims.

Good practice example

Spain's Organic Act on Integral Protection Measures against Gender Violence provides that protective measures can be extended as long as they remain necessary.

Tip for Trainers!

- ▶ Trainers should lead a group discussion on what kind of safety measures could be put in place to keep the victim safe before the trial. The aim of this exercise is to get the group to revisit the safety factors mentioned on page 54 and transform them into specific measures.
- ▶ Divide the large group into smaller groups and assign each group a number of safety factors 54 of this learning resource. Ask them to come up with practical examples of how to keep a victim safe.

5.7. Trial considerations

Testifying at trial can be an extremely distressful and intimidating experience for victims of domestic violence. In addition to fearing the reaction of the perpetrator and having to recall the traumatic experience in the presence of other people, the victim does not have the control over the developments in court nor the outcome. Victims' expectations towards criminal proceedings, in particular in terms of success, may differ from that of the prosecution.

Tip for Trainers!

- ▶ Trainers should play the following video of a victim being held in contempt by a judge:
- ▶ <https://www.youtube.com/watch?v=t-9jhOajftc>
- ▶ The trainer should facilitate a discussion about how this fits in with a victim-centred, human rights-based approach as discussed earlier. The group should consider how 'success' can be measured in cases of domestic violence. The group should also consider what success looks like to a criminal justice officer? What success looks like to a victim of domestic violence? How can any conflict between them be managed?
- ▶ The aim of this exercise is to get the participants to understand the impact of different views of success for the victim and the criminal justice system.

Note for Trainers

The definition of "success" used by a victim may be harder to measure than those used by the criminal justice system. Victims usually engage with the system at the point of crisis. Where this is the case, success for a victim is likely to be measured by the ability of the police to intervene and make the violence stop, *at that moment in time*. Whereas any additional actions may be viewed as being counterproductive, unhelpful and unsuccessful. "Hand-out 12 – Perception of success" can help justice officers understand the difference in perceptions of success.

Supporting the victim's testimony

Victims who feel that they are supported and treated in a respectful manner are more likely to continue co-operation with the justice sector and provide the best possible testimony in terms of quantity and quality. There are a number of measures that the prosecutor can take before the trial hearing to prepare the victim. Preparing the victim is essential in order to avoid the victim's reluctance to testify as the main witness of the case. As mentioned earlier, keeping the victim well informed of proceedings, their progress and potential outcome, as well as explaining the role of the victim can help to minimise the risk that the victim will decide not to support the prosecution. This constitutes good practice that prosecutors should consider as one of their guiding principles. By helping the victim understand the process, it is more likely that she will continue to co-operate until the end of the criminal process.

Why should the prosecutor meet with the victim?

- ▶ To establish a relationship between the prosecutor and the victim;
- ▶ To reassure the victim that her rights and needs will be taken into consideration;
- ▶ To allay any concerns the victim may have about supporting the prosecution case;

- ▶ To understand the current risk level of the victim and how the prosecution affects this;
- ▶ To ascertain that no further offences have been committed which might affect the current case;
- ▶ To ascertain if the victim will be assisted in giving evidence through the use of special judicial measures like screens, video testimony or voice distortion.

Who should be at the meeting?

- ▶ Prosecutor;
- ▶ Victim;
- ▶ Anyone who is supporting the victim, for example, a relative or representative of a non-governmental organisation;
- ▶ An interpreter or other person who can facilitate communication with the victim.

Suggested activity

- ▶ Trainers should facilitate a discussion about who might be present at a meeting with the victim and the kinds of issues that should be discussed. The trainer should be prepared to meet some resistance about whether or not it is appropriate for a prosecutor to meet with a victim in this manner and whether or not they have the time to do this.

The prosecutor should discuss the victim's needs and fears with regard to the testimony and in case of reluctance make sure that the victim can testify in the courtroom without being physically present or at least without the presence of the alleged perpetrator.³¹ This is possible in many Council of Europe member states, where it is ensured either by recording the testimony in advance or through the use of videoconferencing, or allowing testimony from behind a screen. These measures are however subject to restrictions provided for by national law.

In some instances, although a victim-centred and needs-based approach have been followed, the victim may still choose to withdraw her support for prosecution. Although this can present the prosecution with some challenges, if a strong case has been built by the prosecution team, it may still be possible to proceed. Prosecutors should avoid criticising or blaming the victim for withdrawing her support. Considering the trauma and stress caused by the violence and the legal follow-up, prosecutors should also be prepared to manage victim behaviour, which might not be expected in the courtroom and therefore could be considered as "confusing" evidence or unreliable testimony by the court. If legal professionals are trained on the dynamics of domestic violence and their impact on the victim, then it is less likely that they will stereotype or generalise or be affected by the myths about victims of domestic violence, their behaviour and testimony.

Prosecutors should always bear in mind the victim's right to respect and privacy and challenge stereotypes and myths during court proceedings. Considering the likelihood that the victim has also suffered sexual violence, any evidence relating to the sexual history and sexual conduct of the victim should not be used in order to discredit the evidence presented by the victim. Furthermore, prosecutors should take care that any inappropriate, aggressive or provocative questioning is opposed.

Expert witnesses

In some situations, prosecutors might need to turn to expert witnesses in order to make the judge understand why the victims behave in a certain way. The general rule regarding expert witnesses is that they can only be called to give evidence of issues that are outside the expertise of the court. They cannot be used to bolster a case that is already weak. Each case must be taken on its own merits and an expert should only be called where they can legally assist the court. The following issues need to be taken into consideration when requesting the court to allow the use of expert witness testimonies³²:

- ▶ inform the judge of commonly known characteristics of abuse victims so that they can compare the behaviour of the victim to that profile;
- ▶ reduce the likelihood that the judge will develop negative feelings against the victim based on myths and misunderstandings;
- ▶ enable the judge to examine the facts without interference of bias or emotion.

31. UNODC Vienna (2014). Handbook on Effective Prosecution Responses to Violence against Women and Girls: Criminal Justice Handbook Series. United Nations: New York.

32. Ibid.

- ▶ challenge the plausibility of the victim’s account at trial, not to bolster the victim’s own personal qualities of truth-telling or falsehood;
- ▶ explain why victims retract and give the judge or jury reason to assess in-court retractions;
- ▶ assist the judge in evaluating credibility, not enhancing that credibility.

Tip for Trainers!

- ▶ Trainers should facilitate a discussion using the following guiding question: what can you do as a prosecutor if the victim is reluctant to give a witness testimony/to calm a nervous victim?
- ▶ The aim of this exercise is to get prosecutors to empathise with the victim and understand the importance of allaying her concerns, so that she can give her best evidence.

Protective measures to ease victims’ experience of the trial and facilitate their testimony³³

Confidentiality measures	Privacy measures	Victim support measures
Measures designed to protect the identity of the victim from the press and public	Special evidentiary rules designed to limit the questions that can be posed to a victim during her trial	Measures to ease the victim’s experience during their testimony
<ul style="list-style-type: none"> ▶ Removing any identifying information such as names and addresses from the court’s public records and media ▶ Using a pseudonym for the victim ▶ Prohibiting disclosure of the identity of the victim or identifying information to a third party ▶ Permitting victims to testify behind screens or through electronic or other special methods ▶ Allowing <i>in camera</i> proceedings or closed sessions during all or part of the trial, i.e. during victim’s testimony 	<ul style="list-style-type: none"> ▶ Prohibiting questions about the victim’s prior or subsequent sexual conduct ▶ Not requiring corroboration of the victim’s testimony (according to national laws) 	<ul style="list-style-type: none"> ▶ Permitting victims to testify in a manner that allows her to avoid seeing the accused (i.e. closed circuit TV or screens) ▶ Limiting the frequency, manner and length of questioning ▶ Permitting a support person, such as a family member or friend, to attend the trial with the victim ▶ A video-recorded interview with a vulnerable or intimidated witness before the trial may be admitted by the court as the witness’s evidence-in-chief ▶ Examination of the witness through an intermediary

5.8. Sentencing

Sentencing is a very important part of tackling cases of domestic violence. It is the culmination of all the previous steps of the process and the most concrete way to demonstrate that violence and perpetrator impunity will not be tolerated in society. If a case has been poorly investigated, leading to inappropriate charges being put before the court, it is unlikely that the judge will be able to pass a proper sentence. If the victim is unhappy with the sentence, then it is highly unlikely that she will engage in the criminal justice process on another occasion.

In common with selecting appropriate charges, sentences should:

- ▶ reflect the seriousness and extent of the offending;
- ▶ take into account any previous incidences of violence;

33. Ibid, pp.119.

- ▶ take into account any aggravating features, such as the use of a weapon; vulnerability of the victim; premeditated offence;
- ▶ take into account the impact of the offending on the victim and any children.

Although it is not the role of a prosecutor to seek a specific sentence, they should assist the judge in their capacity as officers of the court. Some ways in which the prosecutor can assist the court in sentencing by:

- ▶ providing the court with information about the perpetrator's background and any relevant previous criminal convictions;
- ▶ informing the court of any civil orders and any breaches of those orders;
- ▶ alerting the court to the impact of the offence on the victim;
- ▶ alerting the court to any statutory provisions that are relevant to the case;
- ▶ highlighting the aggravating and mitigating features of the case;
- ▶ drawing the court's attention to any ancillary orders that are appropriate and making the relevant applications.

The Istanbul Convention requires that the sanctions laid down for all acts of violence against women are "effective, proportionate and dissuasive" (Article 45), however it is left to the national jurisdictions to determine how the offences should be punished. In addition, national jurisdictions are asked to consider aggravating circumstances in the determination of the penalty for the offence (Article 46).

Depending on the role and powers assigned to the prosecutor in determining the appropriate sanction in national law, the prosecutor should, at minimum, prepare the victim for the sentencing hearing and advise her on her options, and discuss with the victim the impact of the sentence.

Section 6: Improving judicial response to domestic violence against women

Judges play a crucial role in the justice system's response to domestic violence against women. They are generally the final authority in civil and criminal matters, and their decisions can have great impact on the victim, the perpetrator, children and other family members. Judges may also be authorised to establish courtroom policies and procedures with a view to creating a safe environment for victims and improving their access to courts, but also in order to increase co-ordination between different agencies. Although prosecutors often have considerable control over the initiation and the course of criminal proceedings, judges are key in ensuring victim safety, holding the perpetrator accountable and preventing re-victimisation. Judges also yield substantial power: police response and prosecutorial response are virtually ineffective if the judicial response is not fully present. Moreover, if judges are unable or unwilling to enforce existing laws, it limits the ability of the intervention system, including of statutory agencies and non-governmental organisations, to operate effectively. Most importantly, due to their unique position in the justice system and in their communities, judges are instrumental in sending the message to victims, perpetrators and society as a whole, that courts take domestic violence against women seriously. While maintaining their impartiality, judges can thus help educate within courts and focus community concerns on the safety of women.

6.1. Judicial discretion

In general, the ability to exercise discretion is an aspect of judicial independence which is crucial for a well-functioning justice system. Judicial discretion is also important for judges dealing with domestic violence against women. Domestic violence against women is too complex and dynamic to enable laws to provide answers for all situations or problems that are likely to arise. Judicial discretion consequently enables the application of what are often general legal instruments to the subtle nuances of individual cases.

Where domestic violence is concerned, judicial discretion may be exercised at multiple decision points in criminal cases. This is particularly the case regarding sentencing (see Section 6.4). But judges may also exercise discretion in civil matters, for example when deciding over custody and visitation rights, or during divorce proceedings. Judges may also have discretion in requiring mediation (see Section 6.6). Judicial discretion is however a two-edged sword. Judges' decisions are shaped by legal aspects of cases, but they are also largely shaped by their beliefs and perceptions of domestic violence against women. As a result, judicial discretion can be - and often is - affected by stereotyping which may undermine victim safety and perpetrator accountability.

6.2. Judicial stereotyping

Historically, judges have played a significant role in perpetuating stereotypes in the field of domestic violence, but predominantly in cases of sexual violence, including rape³⁴. What judges think about the nature and causes of violence against women can severely impact access to justice for victims of domestic violence. Judicial stereotyping occurs when judges base their decisions on preconceived beliefs, rather than on factual evidence. When judges interpret law and hand down decisions on the basis of stereotypes - for example when a victim's sexual history is taken into account when deciding her rights and protection against sexual or domestic violence - it constitutes a violation of her human rights.

No judge can be entirely neutral, because he/she is always the product of his/her history, environment, opinions, assumptions and convictions. Neutrality is distinct from judicial impartiality, which is a fundamental element of securing a fair trial and access to justice for all. Impartiality means that every judge, male or female, must strive to take up a right distance, including a distance from him- or herself, under the influence of the facts and the case file. As long as it hides behind the claim of neutrality, judicial stereotyping can compromise the impartiality of judges' decisions. And it is all the more important to specifically acknowledge and address judicial stereotyping, as judges' opinions are very influential and can be used to rebalance power inequalities and injustices in society.

Impact of judicial stereotyping

Judicial stereotyping may result in the following:

- ▶ distort judges' perceptions of what occurred in a particular situation of violence or the issues to be determined at trial;
- ▶ affect judges' vision of who is a victim of domestic violence against women;
- ▶ influence judges' perceptions of the culpability of persons accused of domestic violence against women;
- ▶ influence judges' views about the credibility of witnesses;
- ▶ lead judges to permit irrelevant or highly prejudicial evidence to be admitted to court and/or affect the weight judges' attach to certain evidence;
- ▶ influence the directions that judges give to juries;
- ▶ cause judges to misinterpret or misapply laws;
- ▶ shape the ultimate legal result.

Source: S. Cusak (2014). "Eliminating judicial stereotyping - Equal access to justice for women in gender-based violence cases". Paper commissioned by the Office of the UN High Commissioner for Human Rights.

In addition to the above list, judicial stereotyping can have a big impact on judges' demeanour and their interaction with victims. When witnessing testimony in court for example, stereotyping can result in insensitive behaviour such as victim blaming, which can in turn lead to secondary victimisation (see Sections 1.10 and 1.13). Victims who have been exposed to secondary victimisation will be less likely to report and may be reluctant or unwilling to testify in the future.

6.3. Ensuring a victim-centred approach

As mentioned above, judicial stereotyping can significantly limit the rights and protection of victims of domestic violence. Judges (as well as court personnel handling cases of domestic violence) can however play a significant role in combating harmful stereotypes latent in the justice system, and in making sure that the

34. For more on the impact of stereotypes, see Section 1.9.

victim's needs and safety are taken into consideration. The following points should be considered by judges in order to ensure a victim-centred approach throughout court proceedings:

- ▶ Develop an understanding of the dynamics of domestic violence, risks posed to women and their children, patterns of violence which may result in victim reluctance, vulnerable groups, perpetrator strategies, perpetrator accountability, etc³⁵. Such an understanding is instrumental to making sure that judicial outcomes are not based on generalised views or preconceptions.
- ▶ Be aware that as a judge, the manner in which you express your views in courtrooms can shape expectations for justice held by victims, perpetrators, court personnel and other actors involved in investigation and legal proceedings.
- ▶ Make sure that statements from the bench and courtroom demeanour (non-verbal communication) demonstrates that the court takes domestic violence seriously.
- ▶ Treat victims with courtesy, compassion, dignity and sensitivity, even if they are not present.
- ▶ Express to women that their courage in coming forward is valued, that their safety is paramount, and that violence is unacceptable
- ▶ Consider victim and child safety at all levels, at all times.
- ▶ Learn and take advantage of all available resources that offer safety and support to victims. It is important for judges to recognise that victims may be overwhelmed by the proceedings and that they may need support.
- ▶ Taking into account the victim's needs and circumstances, inform the victim when the need arises of available options regarding safety planning and support provided by government and non-governmental organisations³⁶.
- ▶ Take the time to explain proceedings, in particular the different stages of the process, in a language the victim can understand. The victim may be overwhelmed by the amount and the complexity of information.³⁷ Provide information to victims on who to contact and how in order to voice their opinions and concerns relating to the case.
- ▶ Develop clear and written protocols detailing the procedure to handle a case. Rules for filing should be written in plain language and in as many languages as necessary.
- ▶ Mitigating the harmful effects of a forensic system. If possible, forensic doctors should be present at the initial appearance of the victim, along with police and victim advocates³⁸, thus limiting the number of times she must repeat her account.
- ▶ Admitting the testimony of the victim as sufficient evidence.

Good practice example

- ▶ In Spain, the Supreme Court admits the testimony of the victim as sufficient evidence for the prosecution, provided that it meets a series of requirements. Thus today the Courts deliver verdicts of guilty with just the victim's evidence. There is no need for other evidence, provided that the victim's evidence is credible without contradiction and meets reasonability requirements which the Court must explain in its verdict.

6.4. The role of judges and courts in the criminal justice process

Once the case has been successfully brought to the court, the role of the judge is to review all the elements in the case file bearing in mind any particularities related to a domestic violence case. As with all legal professionals, judges also need to be well-informed on the dynamics of domestic violence and understand the impact of such violence on the victims and on legal proceedings. Protecting the rights and interests of the victims, including the right to protection and safety should remain key during court proceedings.

Judges need to bear in mind that domestic violence proceedings are likely to differ from other types of violence cases. Domestic violence suffered by the victim will have an impact on the victim testimony and the evidence used is often different from that of other criminal cases.

35. Please refer to Section 1 of this learning resource for a detailed explanation of these and more topics allowing professionals to develop an understanding of the dynamics of domestic violence against women.

36. Please refer to Section 5.2 for more on informing the victims of her rights.

37. *Idem*

38. Victim advocates are professionals trained to support victims of domestic violence and other forms of violence against women. They offer a range of services such as providing information, help in finding resources, and offer emotional and legal support during investigation and court proceedings. Advocates may work in non-governmental organisations or in state agencies.

Delay in reporting domestic abuse to the authorities can sometimes be interpreted as the victim being unreliable. If judges are aware of the reasons underpinning the reluctance to report, such as fear of further violence and retaliation, financial concerns and mistrust in the criminal system, then they are less likely to pass a negative value judgement on the victim when assessing the victim's credibility. There is also usually a considerable time gap between the incident and the legal proceedings and that alone is likely to have an impact on the victim's behaviour as a witness in the court.

Judges should consider protection and safety as a priority and authorise appropriate measures to ensure that the proceedings follow a victim-centred approach. It is important to understand that the risk of repeated violence, including the risk of serious violence or death is often heightened during the criminal proceedings. Judges and courts should therefore actively engage in risk assessments, including a lethality assessment and apply effective measures, including deterrent measures, to prevent further violence from happening. Judges also need to bear in mind that while the criminal case itself only focuses on a specific incident or incidents of such violence, the victim is likely to have suffered from violence or threats of violence for a long time before bringing it to the attention of the authorities.

The following sub-sections review some of the main issues which judges should consider when preparing for and adjudicating a case on domestic violence against women.

Reviewing the evidence

As mentioned above and earlier in Section 5, domestic violence evidence gathering and testimonies are likely to differ from other criminal cases; where violence is perpetrated by a stranger and where gender or power relations do not determine the relationship between the victim and the defendant, and consequently the way the case is investigated and built. The judge's role is therefore to ensure that the quality and quantity of the evidence is sufficient for a domestic violence case. As has been discussed earlier, domestic violence victims may not behave like victims of other violence crimes. Victims who express "confusion" or aggression or "unexpected behaviour" during the trial can be considered as an unreliable testimony by the court. In addition, the recorded reluctance to co-operate with law enforcement and the criminal justice system earlier in the process can further result in the judges developing an antagonistic relationship with the victim.

Because of this difference in victim behaviour, the role of corroborating evidence becomes crucial. It is likely that the victim's initial statement could have been given in such circumstances, where the victim was not capable of understanding what counts as domestic violence (psychological and/or physical and sexual violence) and therefore the victim could also be blaming herself of the situation and the violence suffered (see Section 1.10 and 1.11). Allowing the use of expert witnesses should be considered in order to explain the victim's behaviour and the actions that she has taken with regard to reporting and participating in the legal proceedings.

Key messages

- ▶ Judges need to consider the dynamics of domestic violence and its impact on victim behaviour when reviewing evidence.
- ▶ Expert testimonies are key in dispelling any myths or misconceptions surrounding domestic violence and providing context for victim behaviour. Social framework experts should be considered in addition to clinical experts in order to explain victim behaviour.

Reviewing the indictment

When assessing the indictment, it is important that the judge is very aware of the dynamics of domestic violence and does not allow unjustifiable accounts of violence influence the charges. The perpetrator could blame the victim for the violence and accuse the victim of provoking violence by being violent herself.

In studying the case file, the judges look for information on whether reconciliation or mediation between the parties has taken place, or if the victim has made a request to withdraw her consent to initiating criminal proceedings, or if the prosecutor has requested to discontinue the case. In deciding on the appropriate action, the judge should be able to review this information carefully and return the case to the prosecutor rather than dismissing it altogether. There may also be situations where there are reasonable grounds to believe that

further violence has been committed and therefore the evidence needs to be further investigated and the case returned to the prosecutor.

As has been already discussed under Section 5, any reluctance on the part of the victim to testify should be worked with by the prosecutor and the judge and the reasons given for recanting should always be analysed carefully. The victim could be threatened by the perpetrator or have little faith in the effectiveness of the criminal justice system to ensure her safety. The judge should be able to find out whether the victim's reasons for recanting are genuine and only then inform the victim of her options and consequences that arise from her decisions.

Key messages

- ▶ Courts should avoid dropping charges solely on the basis of the victim refusing to participate in court proceedings or to testify. If there is a grounded suspicion that the suspect perpetrated domestic violence, judges are encouraged to advise prosecutors not to drop the charges automatically. Alternative means for presenting new evidence (for example, expert witness) should be considered where possible.
- ▶ Evidence of prior incidents of violence may be particularly relevant in proving the extent of harm and predicting risks.

The following checklist developed by Women Against Violence Europe³⁹ is intended to assist the court in discovering the reasons why the victim is reluctant or refuses to testify and in finding out whether a victim has been coerced or intimidated into asking for the charges being dropped.

- ▶ Why do you feel reluctant (or refuse to) testify?
- ▶ When did you become reluctant (or decide to refuse) to testify?
- ▶ Were you living with the defendant when the incident happened?
- ▶ Are you now living with the defendant?
- ▶ (If not) Does the defendant know where you are staying?
- ▶ Are you financially dependent on the defendant?
- ▶ Do you and the defendant have children together?
- ▶ Have you discussed the case with the defendant?
- ▶ Has the defendant made any promise to do something for you if you do not testify?
- ▶ Is that promise to do something the reason you do not wish to proceed/or testify?
- ▶ Has the defendant or anyone else threatened you, your children or your family and told you not to testify?
- ▶ Is there some other reason you are afraid of the defendant?
- ▶ (If possible) Are you aware that this court/the civil court can issue an order telling the defendant to stay away from you and have no contact with you and your family? (If possible) Are you aware that if the case is prosecuted, that the defendant can be required to get counselling, pay for your damages, and stay away from you and your family?
- ▶ (If injuries are visible) How did you receive the injuries (allude to police reports, medical reports, photos, injuries still visible in court, etc.)?
- ▶ Have you talked about your desire not to testify with the local Women's shelter/counselling centre/a victim's services?
- ▶ If not, would you be willing to talk to them?

Key message

- ▶ Awareness of the dynamics of violence may reduce a judge's frustration over seeing the same victim multiple times, but also provides an understanding as to why a victim might decline to co-operate with efforts to hold the perpetrator accountable.

39. WAVE (2000). Training programme on combatting violence against women. Available at: <http://www.wave-network.org/content/wave-training-programme-combating-violence-against-women-0>

Ensuring victim safety during the pre-trial period

The pre-trial period represents a heightened risk of further violence to the victim. In most jurisdictions released defendants are not supervised prior to the trial. Perpetrators often violate protection orders during this period putting the victim at risk of retaliation and repeat victimisation. Victims may also be intimidated into changing their story. If the victim does not feel safe or that her concerns are not addressed, she is not likely to continue being co-operative and testify. Judges would therefore need to know if any civil protection measures have been taken during the pre-trial period, as they will also have a direct impact on the proceedings. The protection of the victim also needs to be ensured in the vicinity of the premises of the court as well as in the court room.

Safety measures to consider during the pre-trial period

- ▶ Pre-trial detention;
- ▶ Removal of the perpetrator from the common residence;
- ▶ Obligation to keep distance from the victims;
- ▶ Prohibiting the perpetrator's contact with the victim through any means of communication;
- ▶ Prohibiting the perpetrator from going to certain places in order to preserve the physical and psychological integrity of the victim;
- ▶ Restriction or suspension of visits to dependant minors.

As listed above, the safety measures should include orders, which prohibit the perpetrator from approaching or contacting the victim or the places the victim frequently visits or which allow for removing the perpetrator from the joint or the victim's residence for a period of time. The judge in charge of the criminal process may also have the authority to issue a no-contact order pending trial. No-contact orders prohibit the perpetrator from contacting the victim by any means (telephone, email, in person, at the victim's workplace, home, school etc.) during the criminal case proceedings, preferably until the case is concluded. A violation of such an order should always be a criminal offence. Criminal no-contact orders are different from the civil protection orders, as the victim cannot initiate a no-contact order or make a direct request to the court to terminate the order.

Pre-trial detention and establishing stricter conditions for pre-release are other measures a judge can apply to increase the safety of the victim. When balancing between the right of the perpetrator to bail and the victim's right to safety, judges should always ensure that bail is not granted without a reference to any protection order(s) between the perpetrator and the victim.

Consideration for safety measures should always be dealt with in the context of assessing further violence, by using risk assessment tools, such as checklists or other standardised procedures in close co-operation with agencies or non-governmental organisations providing support and assistance to women victims of violence. In high-risk cases, lethality assessment is a core issue for the judge to consider if no prior risk assessment has taken place. It is important to note that the court needs to access all relevant information in order to make decisions that protect the victim. Judges should always take into consideration any concerns that are raised by the victim relating to her safety.

Key message

- ▶ Whichever special measures are applied or refused by the court, the victim should always be informed of the process so that the victim can take appropriate safety measures.

Often, victims of domestic violence may be involved in multiple proceedings. The manner in which courts are organised, often means that victims need to navigate multiple sectors of the justice system in order to resolve their criminal, family and matrimonial matters. Courts may have different processes, timing and purposes, which often result in additional barriers to victims' access to justice. While the victim might have one or several on-going cases both in civil and criminal proceedings, the processes are irrespective of one another. Therefore, information on barring orders or protection orders and any other on-going civil proceedings, such as a divorce and child custody issues, should be shared between the civil and criminal courts to avoid potential conflicts and any further risk of violence. Such co-ordination should not only be the responsibility of the judge, court staff should also be pro-active in this regard.

It is important that communication and co-ordination is ensured between the civil and criminal courts together with the victim services when making decisions relating to the victim's safety.

Good practice: specialised or integrated domestic violence courts

Some countries such as Spain and the United Kingdom have established domestic violence courts, which allow for processing all criminal and civil matters related to the victim in one single court. Specialised judges, prosecutors and court staff as well as particular considerations linked to the courtroom environment provide safer and more empowering conditions for the victim and contribute in guaranteeing a timely and efficient handling of domestic violence cases.

Trial considerations

Judges and magistrates should be aware of the impact of delays and protracted proceedings on the victims and the case itself. Delays may adversely affect the willingness of the victim to testify and the capacity to recall the details of the offence. Delays in the processing of the case may also increase the risk of retaliation, in particular in cases where the perpetrator is not held in pre-trial detention or violates any protection orders. Therefore, domestic violence cases should always be prioritised and dealt with in a timely manner. Fast-tracking of domestic violence against women cases is recommended, where appropriate.

Good practice example

In Spain, the Organic Act on important Reviews of the Code of Criminal Procedure (2002) introduced fast track trials for specific offences and enables cases of domestic violence to be judged within 15 days of the offence. This contributes to the safety of victims, promotes public confidence in the criminal justice system, and ensures that the sentence of the perpetrator starts promptly.

While contact between the victim and the perpetrator should be avoided at all stages of investigations and legal proceedings, it is often necessary for victims of domestic violence to participate in the criminal proceedings. Some jurisdictions might even request or compel the victim to testify when it is deemed necessary for the proceedings to take place satisfactorily. The judge and court staff should take care that during the trial all possible legal and practical measures are applied to prevent further trauma and ensure that additional intimidation factors, are minimised or removed. The need for special measures should also be assessed, such as testifying in a separate room, recording the victim's testimony or having the victim present through videoconference.

In situations where the victim has agreed to provide testimony in court premises, the principle of no-contact can be respected by allowing the victim to testify without the presence of the perpetrator. It is important to understand that while the court case might focus on one particular incident, the victim is likely to have undergone years of abusive and coercive control, consequently rendering any contact with the perpetrator traumatic.

Judges can also have a significant role in ensuring that the victim's behaviour as witness in the court is not undermined or ridiculed and that the court provides a safe and victim-centred environment for the victim's testimony. The role of the judge is therefore crucial in promoting "zero tolerance" of domestic violence in the courtroom and ensuring that the perpetrator is prevented from behaving in an appropriate manner or making intimidating comments.

Judges should be mindful of the tactics that perpetrators use to manipulate the justice system and how they might appear in court. Perpetrators are more likely to deny the facts rather than take responsibility for their abusive behaviour. They might lie, minimise or externalise the violence by blaming alcohol, stress or the victim for the abuse. Their defence will therefore be focused on requests for evidence (forensics, testimonies, etc.). The perpetrator could even request to open a procedure for a false allegation in order to avoid consequences. Another tactic used by perpetrators in court is to confess or show recognition of the harm that he has done to the victim in order to benefit from a mitigating factor.

Key messages

- ▶ Providing an empowering and respectful environment in the courtroom is likely to maximise the quality of the witness testimony. Paying particular attention to how the victims are questioned in the court can help the victim to feel at ease and provide the best possible testimony.
- ▶ It is considered good practice to establish procedures or guidelines to prevent any humiliating questioning or allowing questions which are not directly relevant for the purpose of criminal proceedings.
- ▶ It is also important to remember that common myths about domestic violence should not be allowed to use by defence counsel in order to challenge the victim's testimony and divert the attention to victim's behaviour from that of the perpetrator.

A checklist can be helpful to facilitate the victim's testimony in the court⁴⁰:

- ▶ Apply for available measures that can facilitate victim's testimony in trial:
 - Measures that permit the victim to testify in a manner that allows her to avoid seeing the accused (namely, screens, behind closed doors, video surveillance);
- ▶ Resolve any outstanding disclosure, scheduling and other procedural issues before the victim appears to limit her time at court;
- ▶ Undertake approaches and ways to reduce the victim's stress:
 - limit her evidence to relevant evidence;
 - allow for short recess when the victim is too distressed to proceed;
 - do not allow an unrepresented defendant to cross-examine the victim;
 - if allowed, have the examination through an intermediary;
 - if allowed, use video-recorded interview as evidence in chief;
 - remove all unnecessary persons, including the perpetrator, whilst the victim gives her evidence.

Sentencing

As has been discussed in Section 5.8, sentencing should be commensurate with the serious nature of domestic violence against women and the gravity of the crimes committed. The primary goals of sentencing are to stop the violence, protect the victim and hold the perpetrator accountable for his actions and to serve as a general deterrent. The sentencing policy of the courts should therefore denounce such violence accordingly.

When developing sentencing strategies, the courts should:

- ▶ ensure that the court has all the information it needs to sentence appropriately;
- ▶ ensure the court considers a risk-assessment of the perpetrator's dangerousness at the time of sentencing;
- ▶ ensure the court hears from the victim at the time of sentencing;
- ▶ consider the nature and gravity of the offence, the history of sexual and physical abuse, previous efforts at rehabilitation, the defendant's character and current rehabilitative needs and the interests of the community in protection and punishment.

Judges are key in holding the perpetrators accountable and the judgements and sentences they issue on domestic violence cases reflect the tolerance/intolerance of domestic violence in society. However, judges and the court should be bear in mind that holding perpetrators accountable within the criminal justice system should not fall to the victim but to the court. It is important to understand that when perpetrators are allowed to manipulate the system to avoid the consequences, accountability is diminished. When perpetrators see that insignificant or no consequences are likely, for example as a result of violating a protection order or routinely suspending domestic violence sentences, their criminal behaviour is likely to continue. Being able to avoid punishment reinforces the perpetrator's belief in his right to use violence to establish power and control over his partner, as well as his perception that such violence will not be punished.⁴¹

The following are important considerations for sentencing domestic violence against women:

40. Background paper on the Justice Sector's Response to Violence against Women and Girls developed for Global Technical Consultation on essential policing and justice sector services to respond to violence against women and girls in co-operation with UNDP, UNFPA, UNODC and UN Women, 22 June 2014.

41. Achieving Accountability in Domestic Violence Cases: A Practical Guide for Reducing Domestic Violence; Illinois Coalition Against Domestic Violence, January 2005. Available at: <http://www.ilcadv.org/>

Favour more intrusive dispositions. Research shows that more intrusive sentences (such as incarceration, work release, electronic monitoring or conditioned probation) significantly reduces re-arrest for domestic violence over less intrusive sentences of fines or suspended sentences without probation.

Take into account the whole prior criminal record. When making a decision on sentencing, it is important to consider both the history of domestic violence and the entire criminal history as they both indicate risk of re-abuse as well as general criminality. Studies indicate that non-related criminal history is overlooked when determining the sanction for domestic violence offense.

Take into account “failure to appear”. Studies indicate that perpetrators who do not show up for court appearance are more likely to re-abuse than those who do appear before court.

Exercise caution on conditional discharges for “first” offenders. There are some studies that show that a minimum of a quarter of “first” offenders who are diverted or given dispositions without guilty findings will re-abuse or violate the terms of their conditional release.

Register sex offenders, where available registry meets human rights standards and provides for individualised assessments.

Consider the negative impact of fines on the victim. In cases, where the perpetrator is the sole breadwinner of the family and maintains a continuing obligation to pay child support to the victim or the victim and her children, a significant fine would negatively impact the perpetrator’s ability to support her and her children and result in financial hardship for the victim.

Judges should also take into consideration aggravating circumstances when determining the penalty for the offence in conformity with relevant provisions of national law. In line with Article 46 of the Istanbul Convention, while there is no obligation on judges to apply aggravating circumstances, they should in any case be available to judges.

The Convention lists a number of situations, which give rise to considering higher sentences for domestic violence cases, including:

- ▶ the offence, or related offences, were committed repeatedly;
- ▶ the offence was committed against a person made vulnerable by particular circumstances;
- ▶ the offence was committed against or in the presence of a child;
- ▶ the offence was committed by two or more people acting together;
- ▶ the offence was preceded or accompanied by extreme levels of violence;
- ▶ the offence was committed with the use or threat of a weapon;
- ▶ the offence resulted in severe physical or psychological harm for the victim;
- ▶ the perpetrator had previously been convicted of offences of a similar nature.

Alongside the aggravating factors, special attention needs also to be given to mitigating factors. In many legal systems confession is considered a mitigating factor in domestic violence cases. However, courts should be careful in weighing the perpetrator’s remorseful attitude against the perpetrated offence. Instead of automatically considering an expressed remorse as a mitigating factor in sentencing, the courts should be mindful of the history of violence beyond the subject case and whether the violence and/or threatening behaviour is on-going. In cases where the violence continues, remorse could be seen as a dishonest gesture by the perpetrator and hardly a mitigating factor to be considered by the court.

Key message

- ▶ It is recommended not to regard confession as a mitigating factor in cases where the investigation could have been undertaken without needing the perpetrator’s confession, that is, when circumstances do not justify the rationale of this mitigating factor.

Some jurisdictions have introduced court-ordered participation in perpetrator programmes as part of the sentence. The overall premise of perpetrator programmes is to develop interventions that can reduce the incidence of repeat violence against women (or, ‘recidivism’) by the men involved in interventions. Perpetrators ordered to participate in such programmes treatment should be subject to court supervision and court sanctions if they do not satisfactorily complete them.

Studies indicate that the effectiveness of the perpetrator programmes⁴² depends substantially on the intervention system that the programme is part of. Consequently, treatment programmes are more effective in terms of increasing the safety of the victim, if strong institutional capacities and co-ordinated referral systems are in place. This entails close co-operation with victim support services, law enforcement agencies, the judiciary, probation services and child protection agencies. Long-term programmes which encourage perpetrators to take responsibility for their actions and examine their attitudes and beliefs towards women are more likely to be more successful. However, this type of intervention requires skilled and trained facilitators.

While many different models for working with perpetrators exist and their effectiveness in bringing about permanent changes in the behaviour of perpetrators is disputable, the main efforts of these programmes should focus on ensuring the safety of the victims.

Tip for trainers

- ▶ The trainers should discuss the sentencing practices related to domestic violence against women in the national context with a view to mitigating and aggravating factors.

6.5. The civil justice response

Protection orders

Protection orders are essential criminal or civil justice measures aimed at preventing further violence from happening and protecting victims. They provide victims with time to reflect on what their options are in terms of safety, and to decide about their future. Protection orders also act as a deterrent measure, since they signal the perpetrators that their behaviour is not acceptable and that there will be consequences for their actions.

Protection measures prevent the perpetrator from approaching or contacting the victim or allow the removal of the perpetrator from the joint dwelling or that of the victim for a specific period of time. The purpose of restraining or protection orders is to offer a fast legal remedy to protect people at risk.

In accordance with the Article 53 of the Istanbul Convention, protection orders should be:

- ▶ available for immediate protection and without undue financial or administrative burdens placed on the victim;
- ▶ issued for a specified period or until modified or discharged;
- ▶ where necessary, issued on an ex parte basis which has immediate effect;
- ▶ available irrespective of, or in addition to, other legal proceedings;
- ▶ allowed to be introduced in subsequent legal proceedings.

Emergency barring orders, on the other hand, serve the purpose of guaranteeing the safety of a victim of domestic violence in situations of immediate danger by ensuring physical distance between the victim and the perpetrator. Such orders remove the burden of seeking safety in a shelter or elsewhere from the victim by allowing her to stay in the home while the perpetrator is ordered to leave the victim's residence, even in the case of a shared residence. In line with the Article 52 of the Istanbul Convention, the competent authorities, usually the police, should be equipped with the powers to issue an emergency barring order to be able to respond adequately to the immediate danger.

The effectiveness of protection orders depends on how specific and comprehensive the orders are and how well they are enforced. Judges and prosecutors should be informed of any additional safety measures taken either by law enforcement or the victim and specifically of any violations of such orders. A breach of a protection order should always be followed by effective, proportionate and dissuasive sanctions as required by Article 45 of the Istanbul Convention.

42. The following resource is recommended to learn more about perpetrator programmes: Hester, M & Lilley, S-J (2014). *Domestic and Sexual Violence Perpetrator Programmes: Article 16 of the Istanbul Convention: A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence*. Strasbourg: Council of Europe. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e1f2>

Suggested activity

Trainers should initiate a discussion on the functioning and effectiveness of civil protection orders in their country, including legal and practical challenges related to issuing and enforcing such orders in accordance with the law.

Addressing domestic violence in family law cases

Some women choose to proceed by way of civil law, such as separation or divorce proceedings, as a response to domestic violence. If judges and court staff are not well trained on domestic violence and the impact of the procedures on victims, such proceedings can be extremely harmful and even lethal for women, who try to seek a way out from violence through separation rather than by holding perpetrators responsible for their actions through criminal law.

Domestic violence often starts or escalates during a divorce or a separation. Commonly used measures applied in family law cases, such as mediation or alternative dispute resolution, can be detrimental to victims seeking divorce. Such measures allow for domestic violence to continue and even increase in intensity and frequency given that the perpetrator maintains control over the victim during these meetings and makes the victim feel even more helpless and vulnerable. Judges should therefore always be mindful of domestic violence and be able to screen family law cases affected by domestic violence in order not to place the victim at further risk of violence during civil law proceedings. In such situations, offering the victims legal aid, prioritising and fast-tracking the cases should be considered.

In divorce cases, judges should also look for any signs of ill-treatment or violence between the parties and respond to claims of domestic violence in order to quickly consider urgent measures concerning children and matrimonial property, measures that can be provisional until the end of the procedure. Also, protection orders should be considered to ensure the safety of the victim.

While divorce might bring about at least a temporary solution to domestic violence, it does not necessarily prevent the perpetrator from continuing the intimidation and threatening behaviour towards the victim and her children. Domestic violence is an important factor when determining custody of children and visitation rights by the court. If incidents of domestic violence are not considered by the judicial authorities when issuing contact orders, it places the victim and the children at further risk and allows the perpetrator to gain access to the victim and continue his abusive behaviour. Hence, Article 31 of the Istanbul Convention requests national legal systems to prioritise the safety of victims and their children over the exercise of any visitation or custody rights in cases of domestic violence.

When the victim is involved in both justice systems, close co-ordination should be ensured between family courts and criminal courts. Some countries, such as Spain, have responded to the need to address both civil and criminal issues in the same court, by establishing specialised domestic violence courts.⁴³

6.6. Alternative dispute resolution processes and sentencing

Alternative dispute resolution (ADR) processes encompass a range of mechanisms to settle disputes out of the court room including mediation, conciliation, arbitration, neutral evaluation, facilitation and restorative justice. Supported by arguments that such methods decrease the cost and time of litigation, reduce court backlog and help preserve important social relationships for disputants, ADR processes have become increasingly popular in Europe.

Mediation, far from being a site of neutral and symmetrical exchange, is an arena where power operates. Bringing the victim and perpetrator together for negotiation and dialogue can add further trauma to victims, in particular in cases of sexual violence and domestic violence. Mediation assumes that both parties approach the process with equal resources and power. In cases of violence against women and domestic violence, however, the balance of power is in favour of the perpetrator due to the abuse, control and/or humiliation that they have exerted on the victim. Interacting with perpetrators during face-to-face meetings can also present risks to the safety of victims. In the context of child contact disputes, for example, some researchers examined the conversations between family court advisors and parents during conciliation or mediation sessions,

43. See box on page 77.

finding that, where mothers brought up the topic of domestic violence, this would disappear by being ignored, reframed or rejected by family court advisers.⁴⁴

In some legal systems, ADR processes or sentencing such as mediation or conciliation are also used in criminal law. These methods have negative effects in cases of violence against women, and other situations when the two parties have unequal positions. These effects are exacerbated if the ADR method is mandatory. When domestic violence cases are addressed through ADR methods, there is evidence to suggest that most cases would end at the first stage of conciliation, either because the woman is intimidated by the presence of her abuser in court, or because of pressure for the case to be closed. Thus, mandatory ADR processes may lead to re-privatisation of domestic violence and trivialisation of the crimes of violence against women, ultimately sending a message to victims that perpetrators can act with impunity. It is for these reasons that the Istanbul Convention prohibits mandatory ADR processes or sentencing in relation to violence against women and domestic violence, by making it a requirement for victims to be able to opt out of such processes.

Article 48 of the Istanbul Convention

Article 48 prohibits - in domestic criminal and civil law - mandatory ADR processes and sentencing, including mediation and conciliation in cases of domestic violence and for other forms of violence against women covered by the scope of the treaty. The aim of Article 48 is to avoid the re-privatisation of domestic violence and violence against women and to enable the victim to seek justice; it is the responsibility of the state to provide access to adversarial court proceedings presided over by a neutral judge and which are carried out on the basis of the national laws in force.

Judges have traditionally supported ADR processes in cases of domestic violence putting forward arguments such as: mediators are better trained and more sensitive to deal with domestic violence than most judicial officers; victims present themselves poorly in court settings resulting in more disadvantaged outcomes; and mediation can help resolve disputes more effectively, to name a few. Judges should however be aware of the impacts that mediation - especially if it is mandatory - may have on victims.

Tip for Trainers!

- ▶ Trainers should discuss with the group the current law and practice on alternative dispute resolution and assess its appropriateness in domestic violence cases.

44. Marianne Hester (2011). The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence. *British Journal of Social Work* (2011) 41, 837-853, quoting Trinder et al. (2010).

HAND-OUTS

Hand-out 1- Power and Control Wheel



The power and control wheel was developed by the Domestic Abuse Intervention Project. For more information use the following link: www.theduluthmodel.org/training/wheels.html

Hand-out 2 - Reasons why women stay and reasons why women leave

Reasons why women stay	Reasons why women leave
Fear	Fear
Children	Children
Lack of economic resources	Support
Lack of support	Education/Information
Shame/embarrassment/feelings of failure.	
Victim blaming	
Stigmatisation	
Insecure immigration status	
Dependency on the perpetrator e.g., health issues	

Losses vs. gains

Losses	Gains
Home/familiar environment	Improved self esteem
Support network	Improved self confidence
Economic power/independence	Economic power/independence
Relationships (with perpetrator, children, family or friends)	Improved relationships
	*Safety

*Safety: The majority of women who are killed as a result of domestic violence are killed, either at the point of leaving or after they have left. Therefore, there is a caveat in respect of this 'gain'

Hand-out 3 - Examples of terminology/phrases to be avoided when dealing with a case of domestic violence

- 1 "It's only domestic."
- 2 "It can't be that bad, if it were, you would have left."
- 3 "What did you do to make him hit you?"
- 4 "He's never hit you, so it's not really abuse, is it?"
- 5 "Why don't you just leave?"
- 6 "I don't believe X would do something like that, he's always so charming and attentive to you."
- 7 "It must be the stress of work that caused it."
- 8 "Don't be such a nag."
- 9 "If he stops drinking/using drugs he will stop being violent."

Hand-out 4 - Myths and facts about domestic violence: Questions

Please answer the following questions:

Statement: A major cause of domestic violence is alcohol and drug abuse. If the perpetrator undergoes treatment for alcohol abuse, he will stop the violence.

Answer: True False

Statement:	Men are victims of domestic violence as often as women are.	
Answer:	True	False
Statement:	Men who commit violence are violent because they cannot control their anger and frustration.	
Answer:	True	False
Statement:	Men who commit violence are often good fathers and should have joint custody of their children if the couple separates.	
Answer:	True	False
Statement:	Couples counselling, family therapy or mediation is the solution for domestic violence.	
Answer:	True	False
Statement:	People who are religious do not perpetrate domestic violence and do not become victims.	
Answer:	True	False
Statement:	Perpetrators are generally violent persons.	
Answer:	True	False
Statement:	When perpetrators are violent, it is because they “lost their temper,” and not because they meant to hurt their partner.	
Answer:	True	False
Statement:	Domestic violence does not affect children living in the family, it is a problem that concerns only adults.	
Answer:	True	False
Statement:	Victims have done something to cause the abuse.	
Answer:	True	False
Statement:	Domestic violence is a problem that affects unmarried couples, perpetrators will stop the violence once they get married.	
Answer:	True	False
Statement:	There is no correlation between animal abuse and domestic violence.	
Answer:	True	False
Statement:	Domestic violence only affects women from certain backgrounds.	
Answer:	True	False
Statement:	Authorities should do everything they can to keep a family together.	
Answer:	True	False

Hand-out 5 - Myths and facts about domestic violence: Answers

Statement:	A major cause of domestic violence is alcohol and drug abuse. If the perpetrator undergoes treatment for alcohol abuse, he will stop the violence.
Answer:	False. Although alcohol and drugs are often associated with domestic violence, they do not cause the violence. Many perpetrators do not drink or use drugs, and those who do, usually do not show aggression towards unknown people, colleagues or bosses, but direct violence at their partners. Perpetrators often use intoxication as an excuse or argument not to have to take responsibility for their actions. It is important to realise that domestic violence and alcohol/drug abuse are two separate issues and need to be treated independently.
Statement:	Men are victims of domestic violence as often as women are.
Answer:	False. Research shows that women are victims in 95% of domestic violence cases. Reports of violence against men are often exaggerated because perpetrators will accuse their partners

of violence as a way to avoid or minimise their own responsibility. In addition, men who do experience domestic violence have more access to resources to leave violent situations than women do.

Statement: **Men who commit violence are violent because they cannot control their anger and frustration.**

Answer: False. Domestic violence is intentional conduct, and perpetrators are not “out of control”. Their violence is carefully targeted at certain people, during certain moments and in certain places. Perpetrators generally do not attack their bosses or people on the streets, no matter how angry they might get. Perpetrators also follow their own internal rules about abusive behaviour. They often choose to abuse their partners only in private, or may take steps to ensure that they do not leave visible evidence of the abuse. Perpetrators also choose their tactics carefully—some destroy property, some rely on threats of abuse, and some threaten children. Studies also indicate that in fact, some perpetrators become more controlled and calm as their aggressiveness increases.

Statement: **Men who commit violence are often good fathers and should have joint custody of their children if the couple separates.**

Answer: False. Studies have found that men who abuse their wives also abuse their children in 70% of cases. Even when children are not directly abused, they suffer as a result of witnessing one parent assault another. Perpetrators often display an increased interest in their children at the time of separation, as a means of maintaining contact with, and thus control over, their partners.

Statement: **Couples counselling, family therapy or mediation is the solution for domestic violence.**

Answer: False. Couples counselling or family therapy is NOT recommended for couples trying to end the violence in their relationship due to the specific dynamic of power and control underlying the violence. Best practice shows that perpetrators should attend specialised programmes teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships and victims should be supported by specialised centres and a domestic violence advocate. In cases of separation, mediation or family therapy is NOT recommended in order to “teach” the couple bilateral communication and/or to gain agreement on custody of children or divorce.

Statement: **People who are religious do not perpetrate domestic violence and do not become victims.**

Answer: False. Perpetrators can be religious people, including priests and parsons. Many victims have deep religious beliefs, which may encourage them to keep the family together at all costs.

Statement: **Perpetrators are generally violent persons.**

Answer: False. Most perpetrators do not use violence in other non-intimate relationships to resolve conflict. “Perpetrators typically present a different personality outside the home than they do inside, which complicates a woman’s ability to describe her experiences to people outside the relationship.”⁴⁵

Statement: **When perpetrators are violent, it is because they “lost their temper,” and not because they meant to hurt their partner.**

Answer: False. Perpetrators use violence because it helps them gain and maintain power and control, not because they lose control of their emotions.

Statement: **Domestic violence does not affect children living in the family; it is a problem only among the adults.**

Answer: False. Domestic violence has a significant impact on children living in the household. Children who grow up in violent families exhibit serious emotional and psychological problems from exposure to domestic violence. As a coping strategy, some children might have a tendency to identify with the perpetrator and to lose respect for the victim, which can lead to the trans-generational cycle of violence.

45. Wilson, K.J. (1997). *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Abuse*. Alameda CA: Hunter House Publishers.

Statement: Victims have done something to cause the abuse.

Answer: False. Perpetrators are responsible for their behaviour and choose their actions. Abuse is NEVER the fault of the victim.

Statement: Domestic violence is a problem that affects unmarried couples; perpetrators will stop the violence once they get married.

Answer: False. After marriage many perpetrators strengthen their feeling of power and control and their possessiveness can even increase. Therefore attacks can also become more frequent and severe.

Statement: There is no correlation between animal abuse and domestic violence.

Answer: False. Many perpetrators use the violence against animals or use threats to hurt/kill pets as a tool of emotional violence in order to maintain their power and keep family members obedient.

Statement: Domestic violence only affects women from certain backgrounds.

Answer: False. While it's true that certain groups of women are particularly vulnerable to some forms of violence or face particular barriers in accessing justice (see Section 1.6), domestic violence does not discriminate on any ground. It affects women from all levels of society, whether rich or poor, educated/uneducated, regardless of migrant status, religion, sexual orientation, and ethnicity.

Statement: Authorities should do everything they can to keep a family together.

Answer: False. The safety and the needs of the victim must come first, and should precede any other considerations. Forcing or influencing a victim to go back to the abusive relationship can have severe consequences, including death. If the perpetrator has not been held accountable for his actions or if the root causes of violence have not been addressed, violence will most likely continue.

Hand-out 6 - Initial phase / First responders

Case study

- 1) A neighbour calls the police and says that for a long time there has been arguing and noise that sounds like fighting from the neighbour who lives below. The neighbour often hears a woman and children crying. The neighbour does not know them and does not know much about them.
 - ▶ What do you do— how do you prepare before arriving at the address? Discuss in groups.
- 2) When you arrive at the scene, you hear shouts and screams coming from inside the flat.
 - ▶ How will you proceed? Discuss in groups.
- 3) A married couple and their two children live at the address. You meet the couple and the father is visibly intoxicated and very aggressive, and the mother is visibly scared and has cut injuries on her arm. She tells you that the children are in their room sleeping.
 - ▶ What will you do? Discuss in groups.
- 4) It turns out that the father has several previous sentences for violence, is unemployed and a drug addict. He has not been previously reported for domestic violence. The mother says that she is very afraid and as a result she does not dare to talk about what has happened.
 - ▶ How do you proceed? Discuss in groups.

Hand-out 7 – Investigation plan: Case study

Case study (continues case study in Hand-out 6)

- ▶ The woman has a deep cut in her arm; she needs to go to the emergency unit. It is unclear what kind of weapon has been used, but it appears as if a knife was used.
- ▶ The woman wants to make a report to the police. It is a domestic violence case.
- ▶ Make an investigation plan!

Hand-out 8 - Investigation Plan

NR.	DATO	ARDEIDSOPPGAVE	NAVN PA IMPLISERT	ANSVAR	FRIST	MERKNAD	UTFRT
1	Date	task	name of the implicated	responsability	deadline	comments	carried out
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							

NOTATER & DIVERSE (notes/comments and various)		
Dato	Hendelse	Beslutning
Date	happening	decision

TIPSLOGG (tips log)						
Nr	Mottatt av hvem	Motatt nar	Observasjon	Tid	Melder	Hyperlink

Hand-out 9 - Checklist for first responders

1. Distribution of the work: clarify who is responsible for what (the victim (adults and children), the perpetrator and the crime scene).
2. Divide the parties.
3. Assessment of the situation: get an overview of the incident - ask clarifying questions.

Victim:

- ▶ Use a recorder
- ▶ Make the victim aware of her rights, duties, and right to legal assistance
- ▶ Use open ended questions when taking the victim's statement: *"tell me what happened"* (physical/ psychological, has there been previous episodes of domestic violence—and who knows about them?)
- ▶ Notice: The victim's state of mind, intoxication, injuries: description and photo
- ▶ Assess the confiscation of clothes/cell phone/items
- ▶ Collect signed approval – exemption from medical/doctors' records
- ▶ Consider other approvals needed
- ▶ Provide information about protective measures such as alarms, protection orders, shelters;
- ▶ Are there children present? Make a note of persons present

Children:

- ▶ Contact the children, who is considered a victim?
- ▶ Take the children to a safe place
- ▶ Map the situation: *"tell me what happened"*
- ▶ Use a recorder

Suspect/perpetrator:

- ▶ Use a recorder
- ▶ Make the suspect/perpetrator aware of his rights and duties – no duty to give a statement to the police, defender
- ▶ If a statement is taken, use open-ended questions: *"tell me what happened"*
- ▶ Notice: The perpetrator's state of mind, intoxication, injuries: description and photo
- ▶ Assess the confiscation of clothes/cell phone/ items
- ▶ Assess arrest

Examination of the scene of the crime/securing and gathering evidence:

- ▶ *"Is what you are told consistent with what you see?"*
- ▶ Confiscate and secure evidence
- ▶ Are there any signs of a fight in the house/flat?
- ▶ Mess, dirt, broken / damaged items, torn off hair?
- ▶ Photograph the scene: negative as well as positive findings
- ▶ Has someone tampered with the crime scene? Is it cleaned up? Has the victim changed clothes?
- ▶ If necessary, go through the rubbish bin
- ▶ Document evidence of child neglect with photographs

Assessments (that police officers on the spot need to c):

- ▶ Children's welfare
- ▶ Forensic assistance
- ▶ Firearms in the house – assess if unsuited to have a firearm
- ▶ Assess if there is a need to take the victim to the emergency unit – Accompany the victim in (so that she does not leave)
- ▶ Assess the risk – protective measure – women's shelter (toys)
- ▶ Multicultural challenges/motive

Witness(es):

- ▶ Door to door action – contact potential witnesses, and if there is sufficient time ask if they have seen and/or heard something
- ▶ Make them aware of their rights and duties, use a recorder if possible
- ▶ Overview of what they can give a statement about, the current case and previous cases

Supplementary work:

- ▶ Start a new police case (police report)
- ▶ Statements from the parties, police report about the examination of the crime scene, etc.
- ▶ Report to child services
- ▶ Assess to send exemption from duty of confidentiality to relevant agencies

Tell me more about.....

Explain...

Describe....

Hand-out 10 – Risk assessment tool: SARA

Check list for assessment of risk of future partner violence (SARA:SV)							
P. R. Kropp, S. D. Hart & H. Belfrage							
Name of the offender:			National identity number of the offender:			Case number:	
Form completed by:					Date:		
Information sources:				Assessment procedure:			
<input type="checkbox"/> Conversation/interview with offender <input type="checkbox"/> Conversation/interview with the victim <input type="checkbox"/> Others: Police reports and conversations with the investigator _____				Y = Risk factor currently present (Yes) P = Risk factor possibly/partially present (Partially) N = Risk factor absent (No) -- = Insufficient information "Current situation" refers to the circumstances in the incident of the complaint and in close connection to this (past four weeks)			
<input type="checkbox"/> These boxes are for checking the various criminal records/police records		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Risk factors for partner violence in the offender						Current situation	Previously
For assessing the offenders personal history of partner violence							
1. Violence							
▶ Physical violence or attempted physical violence, including sexual violence, that has caused medical treatment or control, or should cause medical treatment or control, and/or use of weapon, is assessed as "Y" ▶ Less serious violence or attempts to commit less serious violence is assessed as "P"							
2. Threat or intention to commit serious acts of violence							
▶ Murder threat or other serious violence threat ▶ Threat of executing less serious violence is considered as "P" ▶ Knowledge about plans or thoughts about hurting or killing the victim is included							
3. Escalation							
▶ The person has escalated their intense or threatening behaviour ▶ "Escalation" refers to frequency and or/seriousness of violence/threats							

<p>4. Violation of restriction order/protection order or other measures</p> <ul style="list-style-type: none"> ▶ Refers to breaches of rules and conditions set by restriction order, duty to report, leave, conditional release, protective measures or other measures executed due to partner violence ▶ Cases where the person is arrested by the police or sentenced for such an offense, as well as repeated offenses, should be assessed as "Y" 		
<p>5. Attitudes supporting or excusing partner violence</p> <ul style="list-style-type: none"> ▶ The person expresses social, political, religious, (sub)cultural or personal attitudes that support or excuse partner violence ▶ Includes possessiveness and sexual jealousy ▶ The person bagatellises or denies a lot of or all former partner violence (denies completely, blames others or the victim, or de-emphasizes or denies the consequences of the violence) 		
<p>The offender's psychosocial situation</p>	<p>Current situation</p>	<p>Previously</p>
<p>6. Other crimes (not related to partner violence)</p> <ul style="list-style-type: none"> ▶ The person has been convicted or suspected for other violent or non-violent crimes ▶ The person has an anti-social attitude and/or an anti-social circle of acquaintances ▶ All violence or threats of violence, directed towards strangers as well as towards other family members except the partner, or towards animals, should be included 		
<p>7. Serious relationship problems</p> <ul style="list-style-type: none"> ▶ Breaking up with the partner and/or one or several relationships with high conflict level ▶ This assessment should be done irrespective of the current situation 		
<p>8. Labour market problems/financial problems</p> <ul style="list-style-type: none"> ▶ Unemployment, unstable labour market situation or considerable financial problems 		
<p>9. Substance abuse</p> <ul style="list-style-type: none"> ▶ The person's abuse of alcohol, drugs or medicines has caused a reduction in their health and/or social function (for instance taken care of by the police or fired from work) 		
<p>10. Mental health problems</p> <ul style="list-style-type: none"> ▶ Signs of mental illness (such as serious depression or serious anxiety) ▶ Signs of personality disorder characterised by aggression, impulsivity, instability or extreme jealousy (such as antisocial, psychopathic, narcissistic or emotionally unstable personality disorder) ▶ Suicide thoughts or intentions <ul style="list-style-type: none"> <input type="checkbox"/> Confirmed: The assessment is confirmed/carried out by psychiatric/psychological expertise <input type="checkbox"/> Assumed: The assessment must be confirmed/carried out by psychiatric/psychological expertise 		

Vulnerability factors in the victim For assessing aspects that may affect the security of the victim	Current situation	Previously
11. Inconsistent behaviour or inconsistent attitudes towards the offender <ul style="list-style-type: none"> ▶ Ambivalent behaviour or attitude towards the offender, for instance not wanting to report the case to the police. Has no consistent approach in their behaviour or gives double signals ▶ Gets in touch with the offender directly or indirectly ▶ Normalises or minimises the behaviour of the offender ▶ Does not follow the security measures that have been initiated 		
12. Extreme fear of the offender that causes irrational behaviour in the threatened person <ul style="list-style-type: none"> ▶ The victim is so afraid of the offender that she/he is irrational ▶ Doesn't dare to follow the initiated security measures in a confrontation with the offender ▶ Is threatened to withdraw previously given information ▶ Doesn't dare to break out of the relationship with the offender. ▶ Extremely worried about close ones (such as kids, parents, new partner, pets) 		
13. Inadequate access to social and professional help <ul style="list-style-type: none"> ▶ Lack of knowledge about laws, rights and social service opportunities ▶ Unwilling to seek help ▶ Little or no contact with family and friends ▶ Strongly controlled by the offender ▶ High degree of control from a subcultural/religious environment that supports or excuses partner violence 		
14. Exposed life situation <ul style="list-style-type: none"> ▶ Low level of physical protection in the home ▶ Low level of physical protection at the workplace/school ▶ Unsafe transport ▶ Limited access to alarm/warning systems ▶ Is forced to be in touch with the offender (due to for instance common children) 		
15. Personal limitations <ul style="list-style-type: none"> ▶ Labour market problems/financial problems ▶ Legal problems/disagreements over place of residence/visitation rights ▶ Mental health problems/depression/suicide thoughts ▶ Alcohol, drugs or medicine abuse ▶ Physical health problems/handicaps 		
Other relevant aspects (such as access to weapons)	Current situation	Previously
Risk of partner violence if no protective measures are executed: Draw a ring around: Low (L), Medium (M), High (H), Extreme (E)		
In the near future (critical)?	L M H E	
Risk of serious/deadly violence?	L M H E	

Spousal Assault Risk Assessment guide: Short Version (SARA:SV), Version 2 P. R. Kropp, S. D. Hart & H. Belfrage

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Specific training is necessary in order to use SARA:SV properly.

Suggested protective measures:

Hand-out 11a - Ruxandra and Alexandru (Prosecutors)

Ruxandra and Alexandriu had been in a relationship for 3 years at the time of this incident. There had been incidences of violence during the relationship but Ruxandra had never reported any of them to the police. She didn't report them because Alexandriu always seemed very remorseful after each incident. He blamed the violence on the stress of his job and the fact that Ruxandra was always 'nagging' him about his drinking and drug taking.

On the day of the incident, Ruxandra was treating Alexandriu to a night out because it had been his birthday during the week. They decided to go away to a hotel for the weekend. On the way up, Ruxandra gave Alexandriu her bank card and security number to withdraw some cash for the weekend.

When they arrived at the hotel, Alexandriu started smoking cannabis. When Ruxandra complained, he started shouting at her, that it was his birthday and he could do what he wanted. Ruxandra continued to argue with him and Alexandriu punched her in the face, breaking her nose in the process. The manager of the hotel came to their room because of the noise. He saw that Ruxandra was upset and he saw that her nose was bleeding. He asked her what had happened and she told him that Alexandriu had punched her in the face and broken her nose. The manager told Alexandriu that he was going to call the police and Alexandriu punched the manager in the face as well, breaking his glasses and causing above his left eye. Alexandriu ran out of the room, whilst the manager was calling the police.

When the police arrived, they searched the hotel for Alexandriu and found him at the cash machine in the hotel lobby. He had Ruxandra's bank card and had withdrawn 10,000 lei from her account. The police told Alexandriu what Ruxandra and the manager had said. He admitted hitting Ruxandra and the manager. He also admitted to taking the money out of Ruxandra's bank account. Alexandriu was arrested by the police and charged with assault on Ruxandra and the manager. He was also charged with theft of 10,000 lei

When Alexandriu appeared in court, he pleaded not guilty to all the charges. Ruxandra came to court with him and said that she wanted to withdraw her statement and that she did not want to pursue the case anymore.

You are the prosecutor in this case:

- ▶ Is it in the public interest to pursue this case?
- ▶ Do you have enough evidence to pursue the case?
- ▶ Do you agree with the charges that Alexandriu faces? If not, what charges would you have?
- ▶ How will you handle the situation with Ruxandra saying that she wants to withdraw her statement?

Hand-out 11b - Ruxandra and Alexandru (Additional information for prosecutors)

You are the prosecutor preparing the case of Ruxandra and Alexandru for trial. The police have told you that Ruxandra is very nervous about the trial. Alexandru and his family have been bombarding her with telephone calls and texts, threatening to kill her if she continues with the case. She is very afraid because Alexandru keeps a gun in the house and has threatened to kill her and commit suicide if she ever tries to leave him. Ruxandra has told the police that she is going to come to court with Alexandru on the day of the trial and withdraw her statement because of her fear. She says that ever since Alexandru has been arrested and charged by the police that he has been more scary than she has ever seen him.

Ruxandra asks the police if there is any way she could give evidence against Alexandru without being in the same room as him?

- ▶ Does this additional information change the way in which you would handle Ruxandra saying that she wants to withdraw her statement?
- ▶ If it would change your mind about how to handle Ruxandra's withdrawal, what options are available to you?
- ▶ Would you consider any further charges against Alexandru?

Hand-out 11c - Ruxandra and Alexandru (Judges)

Ruxandra and Alexandru had been in a relationship for 3 years at the time of this incident. There had been incidences of violence during the relationship but Ruxandra had never reported any of them to the police. She didn't report them because Alexandru always seemed very remorseful after each incident. He blamed the violence on the stress of his job and the fact that Ruxandra was always 'nagging' him about his drinking and drug taking.

On the day of the incident, Ruxandra was treating Alexandru to a night out because it had been his birthday during the week. They decided to go away to a hotel for the weekend. On the way up, Ruxandra gave Alexandru her bank card and security number to withdraw some cash for the weekend.

When they arrived at the hotel, Alexandru started smoking cannabis. When Ruxandra complained, he started shouting at her, that it was his birthday and he could do what he wanted. Ruxandra continued to argue with him and Alexandru punched her in the face, breaking her nose in the process. The manager of the hotel came to their room because of the noise. He saw that Ruxandra was upset and he saw that her nose was bleeding. He asked her what had happened and she told him that Alexandru had punched her in the face and broken her nose. The manager told Alexandru that he was going to call the police and Alexandru punched the manager in the face as well, breaking his glasses and causing a bruise above his left eye. Alexandru ran out of the room, whilst the manager was calling the police.

When the police arrived, they searched the hotel for Alexandru and found him at the cash machine in the hotel lobby. He had Ruxandra's bank card and had withdrawn 10,000 lei from her account. The police told Alexandru what Ruxandra and the manager had said. He admitted hitting Ruxandra and the manager. He also admitted to taking the money out of Ruxandra's bank account. Alexandru was arrested by the police and charged.

When Alexandru appeared in court, he pleaded not guilty to all the charges.

You are the judge in this case:

- 1) You need to decide on pre-trial detention, on the removal of the perpetrator from the common residence and on keeping distance from the victim.
 - ▶ What measures would you decide?
- 2) The case of Ruxandra and Alexandru is now listed for trial. There are 5 witnesses for the prosecution: Ruxandra, the hotel manager, 2 police officers and a doctor. The only witness for the defence is Alexandru. However, last minute, Ruxandra refuses to participate in court proceedings or to testify.
 - ▶ How would you react on the basis of the victim refusing to participate in court proceedings?
 - ▶ What could you do to facilitate Ruxandra's testimony in trial?
- 3) Finally, Ruxandra changes her mind and, before the trial starts, the prosecution makes an application for Ruxandra to give her evidence from a different location.
 - ▶ What information do you need in order to help you make a decision?
 - ▶ Which evidence is going to be particularly relevant for you?

- 4) You have heard evidence from all of the witnesses and were satisfied so that you are sure that Alexandriu committed the crimes he was charged with. You have adjourned the case for sentencing.
- ▶ What information would you need from the prosecutor to help you pass an appropriate sentence?
 - ▶ What factors would you take into account in sentencing Alexandriu?
 - ▶ Can you do something else in addition to sentencing Alexandriu?

Hand-out 11d - Ruxandra and Alexandru (Police)

Ruxandra and Alexandriu had been in a relationship for 3 years at the time of this incident. There had been incidences of violence during the relationship but Ruxandra had never reported any of them to the police. She didn't report them because Alexandriu always seemed very remorseful after each incident. He blamed the violence on the stress of his job and the fact that Ruxandra was always 'nagging' him about his drinking and drug taking.

On the day of the incident, Ruxandra was treating Alexandriu to a night out because it had been his birthday during the week. They decided to go away to a hotel for the weekend. On the way up, Ruxandra gave Alexandriu her bank card and security number to withdraw some cash for the weekend.

When they arrived at the hotel, Alexandriu started smoking cannabis. When Ruxandra complained, he started shouting at her, that it was his birthday and he could do what he wanted. Ruxandra continued to argue with him and Alexandriu punched her in the face, breaking her nose in the process. The manager of the hotel came to their room because of the noise. He saw that Ruxandra was upset and he saw that her nose was bleeding. He asked her what had happened and she told him that Alexandriu had punched her in the face and broken her nose. The manager told Alexandriu that he was going to call the police and Alexandriu punched the manager in the face as well, breaking his glasses and causing above his left eye. Alexandriu ran out of the room, whilst the manager was calling the police.

When the police arrived, they spoke to the hotel manager and Ruxandra. The hotel manager told them that he had been assaulted by Alexandriu and showed them his bloody nose. He said he was going to hospital to make sure that there was no serious damage to his eye. He told the police that the hotel had CCTV cameras and that they covered the entire hotel. Ruxandra was crying hysterically and appeared to be drunk. She told the police that she and Alexandriu had quarrelled over the fact that he was smoking cannabis and that he had punched her in the face and broken her nose. Ruxandra said that she had recorded some of the incident on her cell phone. She also told the police that she wanted to go ahead with the case as Alexandriu had assaulted in the past and she had withdrawn the cases in the past due to pressure from Alexandriu and his family.

The police searched the hotel for Alexandriu and found him at the cash machine in the hotel lobby. He had Ruxandra's bank card and had withdrawn 10,000 lei from her account. The police told Alexandriu what Ruxandra and the manager had said. He admitted hitting Ruxandra and the manager, but said it was in self-defence after they both threatened him. He also admitted to taking the money out of Ruxandra's bank account.

You are the law enforcement official in this case:

- ▶ What is your investigation plan in this case?
- ▶ Would you arrest Alexandriu?
- ▶ How will you secure the scene of the crime?
- ▶ What sources of evidence are available to you in this case?
- ▶ What evidence will you need to gather in order to build the strongest case?
- ▶ What charges would you charge Alexandriu with? Why?

Hand-out 12 - Perception of success

Victim	Criminal Justice System
Abuser stops their violence	Abuser is prosecuted
Abuser leaves	Abuser is convicted
Abuser stops harassing the victim	Actions of the abuser are recorded for the purposes of any other legal proceedings
Victim and children feel safer	Re-offending and re-victimisation are reduced
Victim and children are safer	Abuser is held accountable for their actions

Victim	Criminal Justice System
Victim and children access other services	
Victim feels believed and supported	
Abuser is held accountable for their actions	
Victim feels that 'justice' has been done.	

Hand-out 13 - Example of European Court of Human Rights Case law

Facts:

The applicant alleged that at about 5 p.m. on 4 March 2004, while in the matrimonial home with her daughter, she received a telephone call from her husband asking her to leave and threatening to kill her. Her husband later returned to the flat and threatened to beat her until she required hospital treatment and to kill her if she did not move out. He threw several objects to the ground and struck her, all in the presence of her daughter. On 5 March 2004 the applicant took her daughter for a medical examination, at which it was concluded that the child was psychologically traumatised. On 6 March 2004 the applicant went to hospital; the medical certificate stated that she presented traumatic injuries necessitating eight to nine days treatment that could have been sustained on 4 March 2004 and have resulted from repeated blows with a hard object. The couple divorced in October 2004.

On 6 March 2004 the applicant lodged a criminal complaint against her husband with the police. On 3 May 2004 she brought criminal proceedings accusing him of threats, insults, assault and other acts of violence. In a judgment of 14 March 2005, the court of first instance upheld her complaint in part and ordered her husband to pay a fine. He appealed. In a judgment of 9 June 2005, the county court upheld his appeal, quashed the judgment delivered at first instance and directed the husband's acquittal of the charges of assault and other acts of violence.

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