



Improving Judicial Response to Domestic Violence in the Courtroom

Running Time: 2 ½ hours
Materials: Flipchart and flipchart stand/chalkboard, markers.
Target Audience: Judges and/or judicial clerks

This session is intended as an opportunity for judges and court personnel to strategize about improving the judicial response to domestic violence in the courtroom and in their profession generally. This particular session is designed to be used after introductory sessions in which the dynamics of domestic violence are explored in depth. The session also assumes that the participants are either already familiar with, or have attended training sessions on the definition of domestic violence and the specific laws in their country which address domestic violence, either general criminal and civil law or specific domestic violence legislation.

Introduction

Facilitator: Judges play a crucial role in addressing domestic violence. Judges make decisions that affect the lives of the victim, the batterer, the children and, potentially, other family members. The judicial system can help protect victims and their families, ensure that perpetrators are held accountable and prevent further domestic violence. Despite the fact that domestic violence is a widespread problem everywhere that it has been studied, it is also true that women face many obstacles when they seek relief from the legal system. During this session, we will identify barriers in the legal system that impede victim's ability to access justice. We will then strategize about specific strategies that will address these barriers.

Learning Objectives:

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

- Identify barriers in the legal system that impact women's ability to access/ achieve justice in domestic violence cases.
- Identify other key actors in the law enforcement system that are involved in domestic violence cases and how their work impacts that of the judiciary.
- Develop strategies and methods to overcome barriers in the legal system, become motivated to remove barriers and coordinate with other professionals when possible.

❖ *Before beginning this session, it is recommended that facilitators first conduct general awareness-raising sessions (Identifying the Problem: What Is Domestic Violence? and Researching the Problem: Myths and Realities of Domestic Violence, Causes and Theories of Domestic Violence) in order to ensure that the target audience has a basic understanding of the issue. Additionally, facilitators should have previously identified specific aspects of the local judicial system that will be addressed by this training, and can modify the learning objectives accordingly.*

Activity 1: Discussion of How Domestic Violence Cases Come to Court

1. Facilitator begins by asking the participants to describe how domestic violence cases come before judges in the courtroom, discussing cases that they have seen in their practice, but maintaining the privacy of the individuals involved. Facilitator may draw participants' attention to the following:

- Is there a specific domestic violence law?
 - Which criminal code provisions prohibit domestic violence?
 - Which civil/ administrative code provisions apply to domestic violence?
 - Is domestic violence an issue in cases of divorce?
 - Describe any other cases in your practice in which domestic violence was an issue
- ❖ *Before beginning this session, it is recommended that facilitators review how the legal system in the country of training addresses domestic violence. In some countries, general criminal laws apply to cases of spousal abuse; in other countries there may be specific laws prohibiting domestic violence or intra-family violence. Facilitator should also keep in mind that civil or administrative law provisions may also apply to domestic violence cases*
2. Facilitator summarizes the results of the brainstorming drawing participants' attention to the fact that they see evidence of domestic violence in a variety of cases in their practice.

Activity 2: Identifying Barriers in the Legal System to Accessing Justice

1. Facilitator asks participants what percentage or proportion of domestic violence cases they think are heard in court. Alternatively, the facilitator presents the following information: The UN Special Rapporteur on Violence Against Women and human rights organizations have found that domestic violence is generally underreported and that victims of domestic violence infrequently seek assistance from the legal system about this problem.
2. Facilitator leads brainstorming session to create a list of possible reasons that few domestic violence cases enter the legal system and potential barriers to women seeking relief through the courts. Facilitator asks each of the participants to share their ideas randomly or in turn.

- ❖ *Write down each idea as they are offered on a flipchart without any comments, notes or questions for 7-10 minutes. After discussing the ideas, post the list on the wall so it is visible throughout the training workshop.*

If participants find it difficult to identify reasons why women do not seek justice, or if the responses are all related to the victim herself, the facilitator may use the following as examples to promote discussion, asking how these factors each affect a woman's ability to use the legal system:

- Hours of operation and/ or location of the court;
 - Difficulty in obtaining certification from a forensic doctor;
 - Fees associated with filing a case or obtaining certification from a forensic doctor;
 - Delay in court procedures;
 - Monetary sanctions imposed against the perpetrator; etc.
3. Facilitator summarizes the results of the brainstorming, adding points that were not brought up by the participants if necessary.
 4. Facilitator forms small groups of 4-6 participants, distributes sample scenarios, flipchart sheets and markers and gives them the following task:
 - ◆ I will distribute a scenario to each group.
 - ◆ Discuss the scenario in your group and identify the types of barriers that we just listed previously. In addition, identify any specific acts of the various professionals mentioned in the scenario that the victim encounters, which may have impeded a woman's access to justice.
 - ◆ Record your conclusions on a flipchart. You will have 20 minutes for this task, after which you will report to the entire group.

- ❖ *Facilitator should prepare scenarios in advance that illustrate problem areas that advocates who work with victims of domestic violence have identified in the country of training. Ideally, each scenario will contain a combination of “structural” problems, i.e. having to do with the physical aspects of the court, as well as legal professionals’ attitudes and beliefs about domestic violence. A few sample scenarios are included at the end of these materials as illustrations for facilitators. In addition, the scenarios may also introduce topics that require greater discussion and which the facilitator can elaborate on in subsequent training sessions, such as lethality assessment and mediation in divorce cases. These points are noted after each scenario.*

As participants work on the task, move from group to group and help clarify their task. Be attentive to the possibility that participants may focus on the conduct of other professionals, i.e. prosecutors, police etc. instead of that of the judiciary. In this case, try to redirect the discussion by encouraging the participants to ask themselves how the judicial system may also have contributed to the situation.

5. Facilitator reconvenes the entire group and has each small group report on their results using the following process:

- ◆ Ask a representative from each group to read or summarize the scenario so that everyone understands the situation.
- ❖ *It is advisable to distribute a handout containing all the scenarios to each participant at this time.*
- ◆ Ask another participant from the same group to display his or her group’s flipchart sheet and explain how they reached their conclusions. Other participants from the group should feel free to add points of clarification whenever necessary.
- ◆ Allow participants from the observing group to ask the presenting group questions about their findings.
- ❖ *As each group reports, record the main points of the group’s presentation, grouping like issues together under major categories, i.e. “physical layout of court and hours of operation,” “lack of knowledge about domestic violence legislation,” “problems that arise during the hearing of the case,” etc.*

Be aware of the possibility that the participants may focus on problematic conduct or acts of the professionals involved in each scenario. (For example, the judge interrupts the victim and prevents her from telling her story.) If this occurs, draw participants’ attention to possible omissions that may also have contributed to the situation described in the scenario. For example, the judge fails to ask the victim about a potentially lethal situation. Record these in the appropriate category on the flipchart.

- ◆ Repeat the process until each group has reported its conclusions and thank all the participants for their hard work.
6. Facilitator tells the group that they have identified many professionals that are involved in cases of domestic violence, and instances in which those actors, through either acts or omission, may have negatively affected a woman’s ability to access the judicial system and obtain redress.
 7. Facilitator asks the participants to brainstorm other key actors, if they have not listed them all previously, and asks the group summarize in a few words their role in addressing domestic violence. The facilitator next asks the participants to identify how the work of each professional interacts with the work of the judiciary and to give concrete examples of how the actions of each professional group impact each other’s work. Facilitator draws the group’s attention to the fact that

an understanding and coordination of each other's professional roles can improve the overall system response to domestic violence.

- ❖ *The topic of coordinating the community response to domestic violence could be the subject of an entire training program, but the facilitator can use this opportunity to introduce the concept that various professionals must work together in order to ultimately improve a victim's access to justice.*

Activity 3: Developing Strategies for Improving the Judicial Response to Domestic Violence

1. Facilitator introduces the exercise by explaining that they have just been identifying ways in which the legal system may create barriers for victims of domestic violence who are trying to obtain justice. Facilitator points out that they have identified a variety of obstacles, some within the judiciary and some within other professional spheres.
2. Facilitator explains that the purpose of the next exercise will be to strategize about concrete ways in which the judicial system can improve its response to cases of domestic violence. Facilitator clarifies that there are limitations to what can be achieved in the short term and what types of changes require long-term work, but that they should work together to identify a variety of strategies.
3. Facilitator divides participants into small groups of 4-6 participants and gives each group one the categories listed on the flip chart from the previous discussion. Facilitator gives each group pieces of flipchart paper and a marker and tells them that they will brainstorm and strategize about potential solutions to the problems listed in their category, classifying the solutions as either "immediate actions" (actions that can be undertaken now with little or no expense) and "long-term action" (activities that require extensive planning, coordination, technical assistance or funding).
4. Facilitator shows the participants a flipchart illustrating a continuum that will help them to conceptualize the range of activities they can discuss.



Prior to the exercise, prepare a flipchart with the following continuum. The flipchart can also include a sample problem and strategies to illustrate the purpose of the exercise:

Problem: *Judges may be unaware of a perpetrator's prior history of domestic assault.*

Immediate Action

If clerks assist victims in opening a case, they can be instructed to ask whether perpetrator has a history of domestic abuse and record this information.

Long-term Action

Court develops process to access information about previous assaults, considering coordination with other criminal justice

Court can install computer system that tracks all cases

5. Facilitator asks if there are questions and gives the following directions: record your strategies on flipcharts, using the continuum. You will have 20 minutes for this task, after which you will report to the entire group.

- ❖ *As participants work on the task, move from group to group and help clarify their task. Facilitator should prepare some possible strategies to assist each group if they find it difficult to brainstorm potential solutions. In addition, facilitator should encourage participants to focus on short-term achievable strategies, even if they are not complete solutions to the identified problems. For example, if an identified problem is how to insure victim safety, a short-term solution can be for judges to inquire about lethality factors and determine if there are ways to protect the victim, either through existing statutory provisions or referrals to local service providers.*

Again, be attentive to the possibility that participants may focus on strategies that involve changes in other professions only. Allow participants to include these types of actions on the flipchart but encourage them to also think about ways that the judiciary interacts with other actors in the law enforcement system and possible actions they can take as well.

6. Facilitator reconvenes the entire group and has each small group report on the strategies they have devised. Facilitator encourages each group to comment on or elaborate on the possible strategies. Other strategies can be added to each flipchart sheet as they are raised.

7. Facilitator closes the exercise by emphasizing the following concepts:

- ◆ The participants came up with creative and interesting solutions to some of the problems women face when trying to access the judicial system in cases of domestic violence. In other countries, other tactics have been adopted. For example, some jurisdictions in the U.S. have created courts that handle only domestic violence cases; others have altered court processes to ensure more effective processing of domestic violence matters; and others have specialized staff that provide support to victims. This strategy involves creating a 'specialized court system' or 'dedicated courts and/or procedures.'
- ◆ Judges have a unique role in addressing domestic violence. In the courtroom, they enforce and interpret existing laws and may also have the ability to establish courtroom policies and procedures that enhance victim safety. Outside of the courtroom, judges can be community leaders, and can help shape a community's response to domestic violence by mobilizing other professionals and through example. Some specific actions that judges can take in their practice include:
 - ❖ Enforcing laws to ensure victim safety and accountability of the batterer;
 - ❖ Exercising discretion in interpreting and enforcing the laws in ways that enhance victim safety and batterer accountability;
 - ❖ Establishing courtroom policies and procedures to enhance victim safety;
 - ❖ Treating domestic violence as a serious issue;
 - ❖ Holding consistent training for court personnel on domestic violence.
- ◆ Although many of these solutions and others suggested by the participants require long-term and sustained efforts, the group also came up with a number of creative strategies that can be implemented immediately.

8. Facilitator asks the participants whether they can each, as individuals, make a commitment to try to implement one or more of the short-term strategies. If the group is in agreement, facilitator asks each participant in turn to commit to an attainable goal and to tell the group what it is and what their timeline is for implementing it. Facilitator concludes by encouraging participants to work together and use each other, as well as other professionals, as resources in implementing these strategies.

Summary and Closing:

Facilitator closes, emphasizing the following points:

- ♦ The judiciary plays a crucial role in addressing domestic violence. Judges' decisions can impact victim safety and perpetrator accountability.
- ♦ Judges encounter domestic violence in a variety of cases in their practice and can apply the principles learned in this training to all such cases.
- ♦ We have identified a number of barriers that prevent women from accessing justice in domestic violence cases, some in the judiciary and some in other areas of the law enforcement system.
- ♦ We have also devised strategies to overcome these barriers, focusing on short-term achievable goals within the judicial system. At the same time, we have discussed ways in which we can cooperate and collaborate with other professionals to ensure that victims of domestic violence can obtain the relief they need.

Questions and Comments:

Facilitator should end the session by asking if there are remaining questions or comments related to this material. Keeping track of feedback will allow the facilitator to make useful changes to future presentations.

Resources:

Domestic Violence: Explore the Issue, *available at* <http://www1.umn.edu/humanrts/svaw/domestic/explore/7legal.htm>

Issue in Depth: Judicial Responses to Domestic Violence, *available at* <http://www1.umn.edu/humanrts/svaw/svaw/domestic/link/judge2.htm>;
Specialized Domestic Violence Court Systems,
available at <http://www1.umn.edu/humanrts/svaw/domestic/link/dedicatedcourts.htm>

INFORMATION FOR FACILITATORS

Sample Scenarios

Scenario 1

Elena has decided to prosecute her case of domestic violence privately, since the injuries her husband inflicted are considered “light” under the criminal code. Elena has had to take a day off work to go to the court, and she missed days previously because she felt ill from the abuse and ashamed to be seen in the office with bruises on her face. She is worried that she may be fired from her job if she has to take any more time off.

Elena arrives at the court with her young son. Ordinarily, the child would be in kindergarten, but Elena is not sure how long she will have to be in court and is worried that she would have to leave to meet her child if he were at school. As they are waiting, Elena’s husband arrives because he has found out about the hearing. He is angry with her for prosecuting a case against him and asks Elena why “she is making him go through this.” He begins to yell at Elena and threaten that things will be much worse when they get home, that he’ll “get back at her” etc. The child is frightened and begins to cry, so a clerk arrives and asks them to please be quiet or to wait outside the building.

Later, in the courtroom, the judge asks Elena why she has brought the case. Her husband answers and says, “because she’s angry at me for going out with my friends.” The judge asks Elena if this is true, and she begins to explain that her husband punched her in the back. The husband interrupts and says that he just pushed her a little and that Elena had been yelling and trying to hit him.

The judge asks Elena “does your husband drink?” and Elena answers “sometimes, but not often.” The judge asks “does he gamble or run around with other women?” Elena answers “no.” Then the judge asks, “well, then what are you here for?” The judge ultimately dismisses the case.

Potential supplemental training sessions: Interviewing Victims of Domestic Violence
Interviewing Child Witnesses/ Using Child Testimony in Domestic Violence Cases

Scenario 2

Irena comes to court with her husband and mother-in-law regarding a case in which Irena’s husband, Paulo, injured her at home. The prosecutor has charged the case under the criminal code provision that addresses intentional assault that results in light injury. The certification by the forensic doctor also classifies the injuries as “light” and indicates that when Irena was examined she had bruises to her arms and thighs and marks on her neck, indicating that Paulo tried to strangle her.

The Judge asks Irena if she was hospitalized for her injuries. Irena says she was and tells the judge the date she went to the hospital. The judge asks her if this date is correct, since it was three days after she was examined by the forensic doctor. Irena confirms that after the forensic examination, she began to feel dizzy and had severe headaches as well as a dull ache in her lower back and side.

Irena tells the judge that even though her husband hit her, it was not serious, and she does not want him to be prosecuted. She asks the judge for leniency. Paulo adds that he is sorry for what he has done and that he was very angry at the time but now they have both resolved their arguments.

Potential supplemental training sessions: Assessing Lethal and Extremely Dangerous Behavior
Recognizing Common Injuries in Cases of Domestic Violence
Long-term Impact of Domestic Violence on Health

Scenario 3

Cornelia and her husband have come to court seeking a divorce. Cornelia begins by telling the judge that she should be granted the apartment and her husband made to leave, since he has been abusive to her for many years. The judge asks Cornelia when the “alleged abuse” took place and whether she ever called the police. Cornelia says that

her husband has hit and pushed her for years but she never went to the police. The judge asks why, and she explains that she was embarrassed and didn't think that the police would do anything. The judge asks if she was ever examined by a forensic doctor, and Cornelia says that she decided to go once but when she arrived, she did not have enough money for the fee. Cornelia tells the judge again that the abuse continued for a long time, but that she never reported it. The judge asks Cornelia to name specific dates when the incidents occurred, but she says that she cannot remember, but that it was frequent, and that the judge can ask her friend who lives in the same apartment building. The judge says that if the "abuse" was serious, Cornelia would remember it, and that she and her husband probably just had "lover's quarrel," which happens in all relationships.

Ultimately, the judge imposes a six-month reconciliation period, the maximum allowed under law.

Potential supplemental training sessions: Interviewing Victims of Domestic Violence
Safe and Effective Mediation in Cases Involving Domestic Violence