

## **Domestic Violence Intervention Based on Reconciliation and Mediation Process in Lao PDR**

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**Abstract:** The objective of this study focuses on increasing the knowledge of the intervention processes for domestic violence disputes at a village level in Laos. This study was a qualitative study by employing the in-depth interviews of 15 key informants, e.g., police officers, lawyers, village heads, social workers, the Lao Women's Union and the Village Mediation Units. Research area was in one rural village of Laos which has high prevalence of domestic violence according to the existing studies. This study found that community mainly used education and focused more on family and reconciliation when addressing family disputes, rather than using the formal legal system or focusing on the legal rights of an individual woman. The study also reflected that in addressing and managing of family violence problems, villagers were relying on the Village Mediation Units which usually involved a very long coordination process for this sensitive issue. Based on its findings, this study supports the argument that in general, there is still a need for a broader quantitative study to systematically and empirically depicting the prevalence and impacts of this problem.

**Key words:** Domestic violence, semi-formal justice system, reconciliation, mediation, supports

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### **INTRODUCTION**

One of the most commonly misunderstanding on domestic violence or violence against women is that it is usually considered to be a gender issue or either a private family issue or a public health issue. Commonly missing in the picture is the understanding of domestic violence as a development issue at global, regional or national levels. Domestic violence is a development challenge, affecting individuals in every country regardless of their age, gender and social background (Barnett and Perrin, 2011). In celebrating of the international day for the elimination of violence against women, a strong message on this development concern was also directly reflected in the speech which was officially delivered by the Secretary General Ban Ki-moon at the UN Headquarter on the 25th of November 2014. Following is the statement excerpted from the Secretary-General's remark:

Violence against women and girls is a global pandemic that destroys lives, fractures communities and holds back development. It is not confined to any region, political system, culture or social class. It is present at every level of every society in the world

This pandemic development challenge has been affecting people from the global level all the way to the

local level. At the global level, this problem was clearly articulated by the WHO fact sheet #239 updated in November 2014. Based on this international public information, a high percentage of women worldwide, estimated at 30%, reporting they have experienced some form of physical and sexual violence perpetrated by their own partner. And in general, approximately around seven in every ten women worldwide report experiencing physical and/or sexual violence at some point in their lifetime (Fergus, 2012). At the regional level, based on the UNWOMEN's Issue Briefs on Women's Human Rights in the ASEAN Region 2010, violence against women in the form of domestic violence is considered to be one of the most common forms of violation of human rights which are usually under-reported or unreported to the authorities. Majority of victims of domestic violence are women and most violators or perpetrators of domestic violence are the victims' own husband or intimate partners. For example, there is up to around 96% in Indonesia, 95% in Vietnam, 57% in Malaysia and 44% in Thailand of all cases of domestic violence are being committed by the victims' own husband or intimate partners.

At national level, based on the public interview of the President of the Lao Women's Union by the Vientiane Times on November 24, 2009, domestic violence or

violence against women is “hidden and is still a new issue for Lao society”. Violence between husband and wife is considered a private matter a long-standing social problem. According to CEDAW report 2009, there is a high prevalence of violence against women and girl or domestic violence in Laos; cases of violence are usually left unreported or settled out of courts due to the “culture of silence” in Lao society at large. As remarked by the President of the Lao National Assemblé in *Vientiane Times* on November 28, 2012, violence against women “has now becoming a serious social problem” in Lao society. It is a serious public phenomenon that hindering social and economic progress in general. It is rooted in our “long-held traditions, norms, harmful practices, beliefs, poverty, social perceptions towards women and lack of education”. This form of violence is exceptionally and disproportionately harmful to women’s physical and psychological wellbeing. Due to its sensitive nature, there is a limited public discussion on the issue of domestic violence in Laos.

Currently, in Laos there is a process to address the domestic violence. This process comprised of three justice systems: customary justice system, semi-formal justice system and formal justice system. The customary justice system is based on the traditional norms and practices of seeking advices from the village elders or family elders or relatives to resolve domestic disputes and especially domestic violence which are occurring in the family between wives and husbands. The semi-formal justice system is based on mediation principle. The government has set up a Village Mediation Unit (VMU) in all villages in Laos. The VMU is under the direct supervision of the ministry of justice. The last component of the justice system is the formal legal system which comprised of courts, judges, prosecutors and police at village, district, provincial and central level. There are key stakeholders within all these three justice system which include the Lao Women’s Union, the National Commission for the Advancement of Women and the Women’s Caucus at the National Assembly. These three bodies are the national women’s machinery in Laos. The focus of this study is on how the three existing justice works in reality and how they are complimentary to one another in addressing issues relating to domestic violence. By studying how the justice systems work, the three key stakeholders working in this system will also be studied to gain more understanding on how these organizations coordinate and manage to work together to address VAW in Laos.

**Objective of the study:** The objective of this study aimed to understand and describe the management of domestic violence at a village level in Laos.

**Scope of study:** In 1986, one of the most comprehensive reviews of the literature on violence against women by Lwis Okun pointed out at least 20 distinct theories. Since then, almost 26 years have passed and many more theories on family violence, intimate partner violence or other types of violence in conjugal relationships have been developed and tested. However, no one conceptual framework can explain adequately what causes violence against women in their own family (Renzetti and Edleson, 2011). Given the myriad availability of perspectives involved and for a practical reason, it makes sense to limit the scope and be selective in this review. The ecological model and the feminist theory are selected as the key assessing frameworks for this study in order to better understanding on how the local villagers in Laos manage or deal with the issue of domestic violence.

Around 2002, the World Health Organization (WHO) has proposed the use of an ecological model to provide a conceptual framework for understanding the nature and causes of violence against women. The ecological model addresses multiple levels of influence and maintains that violence against women should be examined within a nested set of environmental contexts or systems. It considers that behavior does not take place in a vacuum and addresses the relationship of the individual to their environment including the interpersonal relationships or the family, the community and the societal influences (DeKeseredy, 2011). At the core of the model are the individual and the personal characteristics which make them more or less at risk of violence. Around the individual are their close relationships with partners, family members or others and how far these relationships might increase or decrease the risk of violence.

Compliment to the aforementioned ecological model, the feminist theory explains how cultural acceptance of violence allows or even promotes violence. In another word, according to the feminist theory, men beat women because they can get away with it in their particular society (Barnett and Perrin, 2011). The feminist theory encourages an examination of the societal structure that is designed to encourage and perpetuate the superiority of men over women (Renzetti and Edleson, 2011). It focuses exclusively on patriarchy or sexual system of power in which the male possesses superior power and economic privilege as the cause of violence toward women.

As described in the introduction part in Laos, there is a process that manages domestic violence; this process is comprised of three justice systems: customary justice system, semi-formal justice system (based on mediation principle) and formal justice system. Since, most cases of

family disputes have been commonly and publicly known to be addressed or managed by the semi-formal justice system or the village mediation units, the area of focus for this study will be on the mediation model or the semi-justice system. According to Allison Taylor, a mediation process is defined as specific way of resolving conflicts that rest on a key basic element: the mediator's central core beliefs. Folberg and Taylor (1984) proposed that there are seven stages within the mediation process: introduction creating trust and structure; fact-finding and isolation of issues; creation of options and alternatives; negotiation and decision-making; clarification and writing a plan; legal review and processing; implementation, review and revision. The first five stages are assumed to take place with the mediator's presence during the session while acting as a neutral third party. The mediator's key roles are to ensure valid information, free and informed choice and internal commitment to the choice for those making the decisions so that they take responsibility for implementing the decisions that are reached (Schwartz, 1994). The sixth stage was meant to be done by consultation of an advising attorney or judicial or authority figure. The final stage was seen as being done by the participants or disputants themselves with the potential help of the mediators. Folberg and Taylor view these stages as universal to all mediation efforts.

Why the disputants used mediation process as a preferred approach for addressing family conflicts or domestic violence was explained by Rummel (1976). Rummel (1976) believed that each person (or group entity or system) has its own unique set of thoughts or central core beliefs which he called their sociocultural space. Conflicts can occur when people do not understand, tolerate or respect each other's socio-cultural space. These naturally occurring oppositions can lead to a situation of conflict where the individuals involved realize their differences but are unwilling to do anything to change the situation. Eventually, a trigger event or series of events will lead to a state of uncertainty that they can no longer ignore or deny existing conflicts. At this point, they will enter into the process of balancing their differences in view and beliefs. Rummel identified three major approaches through which individuals attempt to balance their differences: coercive force (physical, social, financial or legal intervention); accommodation (mutual behavioral change done by agreement between the disputants by means of direct dialogue and negotiation) and noncoercive processes (mediation, facilitated dialogue where disputants make their own decisions). How the conflict or domestic violence could be started and how it is managed effectively or ineffectively could be depicted by the following Fig. 1.

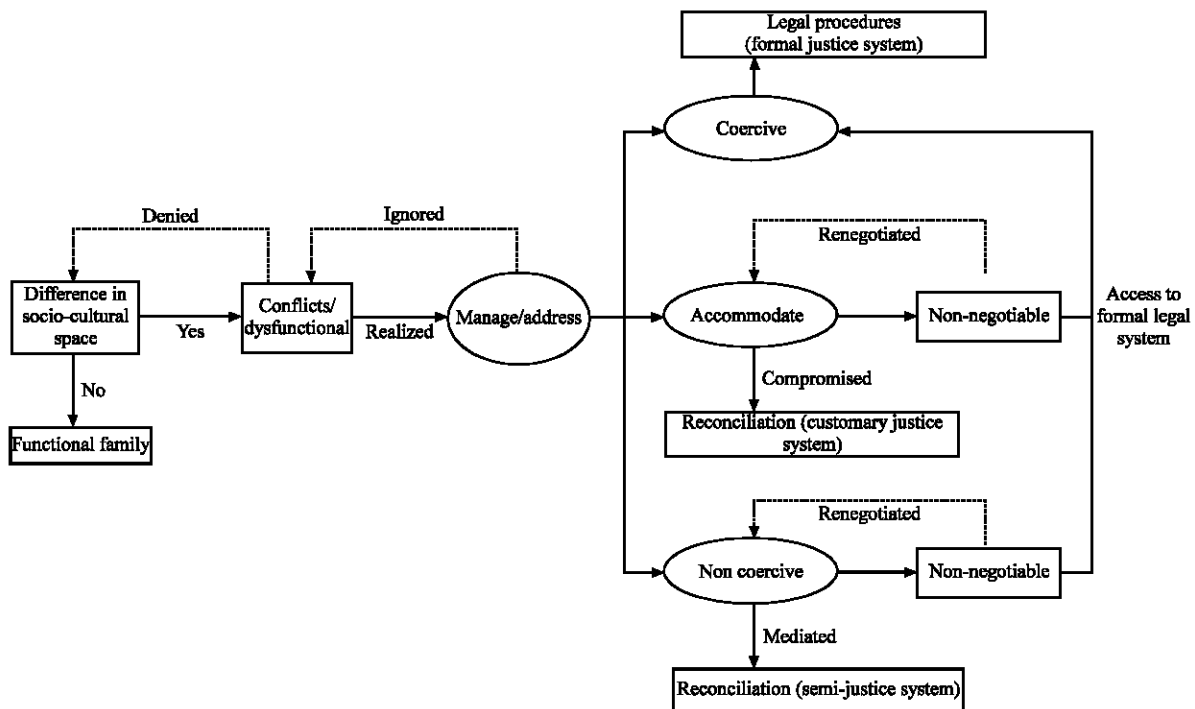


Fig. 1: Diagram showing how conflicts start and being managed

## **MATERIALS AND METHODS**

This research is conducted in one village of Sangthong district, Vientiane municipality. The selected village is called Nasaonang village. Sangthong district is situated about 65 km South from Vientiane city, bordering Hinheub district to the North, Sykhotthabong district to the South, Phouphanang mountain range to the East and the Mekong River to the West. Like most districts in Laos, Sangthong district has been affected by the recent rapid economic transformation across the country. Sangthong is the poorest district in Vientiane Prefecture and is listed amongst the 47 poor districts of Laos (GDG, 2004). According to the 2011 national statistic, there are 37 villages in total which is made up of 4,503 households and has a total population of 23,349 people. Of this, 11,434 are females. While Sangthong district is close to Vientiane city, access was poor until the construction of the new road last year. In the dry season, people leave the district to find better jobs in Vientiane city or across the river in to Thailand. The majority of their populations are farmer on rice cultivation. However, its main income generating activity is plaited bamboo sheets to be used for walls. These are sometimes sent to Thailand or otherwise are sold in the village.

The main reason for the selection of Sangthong district as the study area is based on the availability of the known cases of domestic violence as reported in the GDG's 2004 and 2011 studies, especially in Nasaonang village. Nasaonang village was established in 1987. It is about 9 km from the district centre. There is a population of 426 people (209 women) with 81 households and the majority of its populations are Khmu ethnic people. In a rapidly changing economy such as Laos is currently experiencing, many people, especially the working age men and women are being driven to migrate from their homes in rural to urban communities. In this situation, those men who found themselves unable to economically support their families in the new environment and unable to live up to their culturally defined role as a bread winner usually develop certain levels of stress as a precondition for committing violence against their spouse.

The qualitative research method was selected and used in this study in order to gain a comprehensive understanding on the management of domestic violence at the village level. The village heads, representatives from the village mediation units and local civil society groups (including the mass organization such as the Lao Women's Union) were purposively selected as key informants of this study. Purposive sampling is very useful for this step of study where it needs to reach persons who could provide rich information for the

study (Teddle and Tashakkori, 2009). Moreover, those selected people are primary accountable persons in preventing violence. With respect to this, the village chief is a key gatekeeper in the community as well as a significant decision maker on overall functions of the community initiatives and efforts. As for the sampling selection, the snowball technique was applied to attain diverse perspectives from community members such the male perpetrators. Applying this technique, researcher asked the key informants to suggest other individuals known to them who could provide information useful to the study (Creswell, 2003). Therefore, total sample size for the in-depth interview concerning the community-based issues for this qualitative study is 15 key informants.

The unit of analysis for this study is at both the family and community levels. For the data collection, an in-depth interview based on specific interview guideline was applied in order to elicit rich and detailed information concerning the community-based issues. To the study's concerns, the political context of the community including political commitment and support, policy formulation and accountability, formation and enforcement of rule and regulation and the local institutional contexts of the community including distribution of responsibilities and authorities, organizational resource, organizational capacities and relationships between organization and institutions at different levels are assessed. Moreover, community-based issues such as physical, social-cultural and economical conditions of the victims and perpetrators were investigated. In addition to community-based issue analysis, attitudes and opinions of the community leaders and venerable groups (victims and perpetrators) were reviewed.

General basic interview guidelines was created to obtain information from participants at two different levels: the 'What' or direct experience level and the 'Why' and 'How' reflecting on experience level. And questions focusing on probing or sharing direct experiences included: can you say more about this is there anything else you want to add to this are there any questions about this could you be more specific or what happened and the questions focusing on thinking level or reflecting on direct experiences included: how did you feel when you are experiencing this did anyone else feel the same way about that do you realize that why didn't you response to that.

After the entire data collect process is accomplish, the data from different sources and data collection methods were categorized based on their similarity and themes and then data were analyzed using content analysis technique. All field notes taken during interview were converted into fine notes so that the meaning and

essence would not be lost. The key informants' words, observed scenario, documented charts and figures were used to highlight the main points.

## RESULTS AND DISCUSSION

Lao PDR was established in 1975 under the leadership of the Lao People's Revolutionary Party. In the following period, emphasis was placed on nation building and establishing an administrative structure to restore and remedy damages sustained during the war. Hence, the administrative mandate during this period was to achieve socio-economic development through the application of the Party policy and administrative decrees. In 1986, the country adopted the 'New Economic Mechanism' to transit from a centrally planned to a market oriented economy. This transition marked a shift in emphasis-socio-economic development was now to be achieved through the constitution and laws. Hence, post 1986 period witnessed the enactment of many new legislation including significantly, the adoption of the Constitution in 1991. Within this development context, the legal system in Laos can be considered a relatively new system.

There are three forms of justice systems in Lao PDR the formal, the semi-formal and the informal or the customary system. Formal Justice System is constituted by the People's Court, the Office of the Public Prosecutor and the Police. The system of the People's Court consists of the People's Supreme Court, Provincial and Prefecture Court and District Courts. The People's Supreme Court is the highest level and is also responsible for supervising courts at all levels including controlling judgments granted by lower courts. Although, there were plans to establish courts of first instance in all districts due to the paucity of judges, district courts were consolidated into 39 area courts in 2010 (UNDP, 2010). Another institute within the formal system are the police. The police are under the supervision of the Ministry of Public Security. They are also required to work in close collaboration with the Office of the People's Prosecutor. Police functions include maintaining public peace, law enforcement, crime investigation and managing detention facilities. At the village level, village security is constituted by the "phokosor ban" village police in charge of public security and "khorlorn ban", representing the military and providing protection from external threats to the community. Police determine whether violence is serious or minor. Only when injuries are deemed serious is the woman taken to health facilities and investigations initiated. In a majority of cases, women are encouraged to take cases to the village levels for mediation or the semi-formal justice system.

The semi-formal system is administered by the Ministry of Justice (MoJ) and constituted primarily by the Village Mediation Units (VMU). VMUs are traditional dispute resolution systems at the village level which are under the MoJ's jurisdiction. Headed by a chairman and his/her deputies, the VMU draws its members from seven entities: the National Front for Construction, village authority, Veteran's Federation, LWU, Lao Youth Union, village elders, leaders of ethnic groups and village security. According to the Mediation Guidelines issued by the MoJ the role of a VMU is to help settle disputes at the village levels through the use of mediation and traditional practices, create legal awareness, implement and enforce court orders and assist the village authority in creating a "Case-Free" Village (CFV). The VMU's jurisdiction extends over civil and minor criminal matters. A village is declared to be Case Free (CFV) if it is able to resolve all matters within its jurisdiction without reference to the formal justice system. CFV villages are entitled to additional development assistance.

Customary law and practice of various ethnic groups constitute the informal or the customary law system. Although, there is no official recognition of this system, it is an important part of people's lives particularly in the rural areas. Customary tribunals are appointed from within the community to dispense justice in this system. These tribunals do not distinguish between criminal and civil matters and may handle both. Similar to the VMUs, remedies under this system are aimed at reconciliation, reciprocity, compromise, consent, etc. with an emphasis on preserving the interests of the community. Other remedies include compensation and restitution. Sanctions include ostracism, labor or community service. Imprisonment is rarely imposed. Orders are enforced through community pressure.

**Management of domestic violence:** There is strong emphasis on mediation and conciliation and not on litigation and determination of claims on the basis of law. This position has a significant bearing on cases relating to violence against women; particularly domestic violence, since family disputes and violence within the family are mostly referred to mediation (UNDP, 2009). Hence, the formal justice system can be approached only after mediation or attempts at reconciliation have failed. As discussed later, this places significant hurdles in accessing the formal justice system. Other factors also impede access to court directed remedies. For instance, courts are at a major distance (area courts being nearest to villages) which is a significant hurdle on account of travel expenses and loss of work hours. Even in cases that a person is able to reach courts and obtain an order, there

is no certainty that such orders will be enforced. In these circumstances, complaints to the village chief are preferred to using the formal system.

Laos does not have a designated ministry to deal with issues relating to women. However, it has a mass organization the Lao Women's Union and a National Commission for the Advancement of Women to promote women's rights and interests in all sectors and levels of governance. Established in 1955, the Lao Women's Union is a constitutionally recognized mass organization working to promote equal rights and advancement of women under the slogan of 'three goods' 'being a good citizen being good in development having a good cultural family'. The LWU's core mandate is the political mobilization of Lao Women. It also strives to create legal awareness on rights and benefits and protect Lao culture and tradition. Another of LWU's significant functions is to oversee the implementation of all government's policies and programs related to women's development and gender issues. The LWU's organizational structure has a presence from the center to the grassroots level. Other than politically mobilize women at the local level, LWU members also participated in VMUs to represent women's rights and interests. The LWU also bears the key responsibility of managing and monitoring domestic violence. The LWU is mandated to ensure coordination between the different relevant agencies.

**Interventions sought in cases of domestic violence:** In a number of cases, women do not take any action in cases of domestic violence. The most common step taken by women in situations of violence is to confide in family members and ask them to intervene. Other than family members, women also approach the Village Chief for assistance. However, in most cases, women are advised to stay with their husbands to share responsibilities and improve family relations. Few women mentioned approaching the formal justice system to claim legal rights. As result, domestic violence would appear to be socially legitimized and accompanied by a culture of silence and impunity that cases of violence are thus underreported and those that are reported are settled out of court including through village mediation units. The distinction between severe and none severe violence raises some significant concerns: How is the severity of violence to be decided? For instance, in cases where there are more than one form of violence, e.g. in cases where a series of minor acts of violence such as continuous insults, scorn or negligence, result in serious health consequences. This decision appears to focus on single incident and does not account for domestic violence being a continuum of isolated incidents that impact adversely on women's overall wellbeing.

For accessing justice, unless the violence is severe, a victim has to exhaust the procedure laid out for reconciliation at the village and the mediation unit for settling cases of domestic violence, prior to approaching the police and courts. The steps include:

- Meditation and education of the abuser by family members, close relatives or persons nearby
- Mediation and education by the counseling unit
- Mediation by VMU
- If the problem remains unresolved or if the violence is severe then the VMU may file a complaint with the police

If the VMU is unable to mediate a settlement, the case is sent to District Justice Office for a second mediation. Each step in the aforementioned sequence has to be attempted in the order set out. If after completing the sequence, no settlement is reached, parties have the right to approach the People's Court. Prior to approaching the court, the parties have to get a certificate from the VMU. It has been observed that VMUs are reluctant to issue certificates allowing victims approach courts. This is in most cases to preserve the CFV status which is granted for resolving all disputes at the village level. A victim of domestic violence has to go through four levels of mediation before a police complaint can filed and five levels of mediation before a matter reaches court. The victim has no right to directly approach the Public Prosecutor or the Courts. This mediation procedure is shown in Fig. 2.

The procedure is different in cases involving severe domestic violence, allowing victims to directly approach the police. Even so, whether or not violence is of a severe form has to be determined by each of the entities responsible for settling the case. The absence of clear guidelines for determining severity there is a strong possibility that most cases of domestic violence are not investigated and/or reach courts. It is clear that domestic violence is not treated as a crime and is regarded merely as a family dispute. Moreover, it must be borne in mind, it is not only the VMUs that conduct mediation in rural and remote areas, customary tribunals also mediate matters involving domestic violence using customary law principles. The Khamu ethnic group in Nasaonang village regards domestic violence as a family matter rather than a criminal one. Domestic violence is not viewed as an offence and the primary objective of addressing domestic violence is to promote family harmony. Victims of domestic violence can approach courts only after exhausting mediation procedures prescribed. This places onerous burdens on victim's access to justice and denies

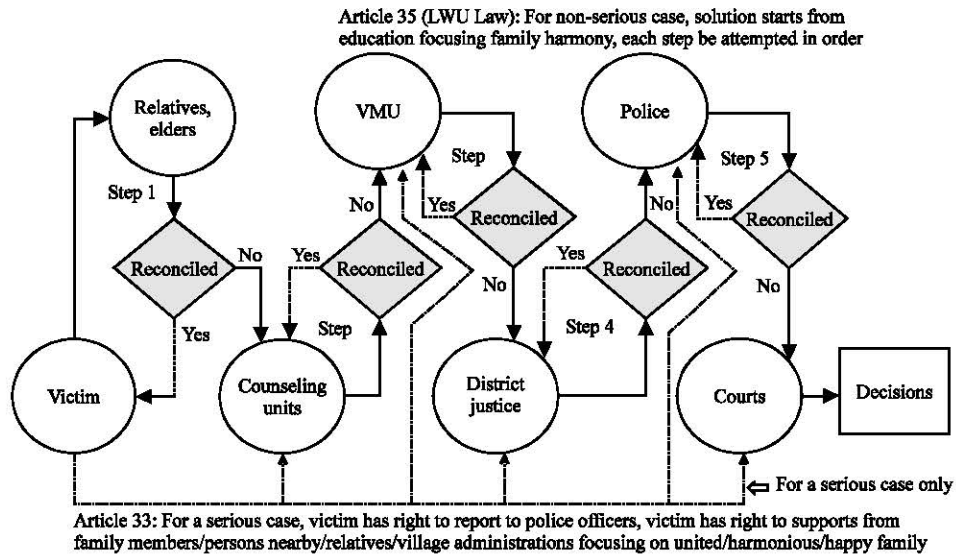


Fig. 2: Mediation procedures

them their right to choose appropriate remedies. This approach is not in consonance with international principles which call for prioritizing victim’s rights over considerations of conciliating families. On the basis, it is concluded that domestic violence is not criminalized by law in practice and mediation is the only ‘relief’ available to victims of domestic violence.

**Mediation in cases of domestic violence:** The procedure for conducting mediation in cases of domestic violence includes: upon receiving a complaint or request, the VMU must study the complaint in coordination with concerned authorities within 7 days. Mediation sessions are also planned during this period; there may be one or more mediation session. Proceedings in each session have to be recorded and witnessed by the attendees. A service fee of 50,000 Kip is charged on each party for each session; if a settlement is not reached, the VMU notes its observations and forwards the case to the District Justice Office for a second mediation; if a settlement is not reached even after the second mediation, parties may file a case in court. VMU mediations are conducted in accordance with Ministry of Justice’s guidelines. These guidelines apply to all kinds of disputes brought to the VMUs and there are no special guidelines for cases of domestic violence. This is highly problematic as mediation is conducted on an assumption that parties have equal bargaining power which does not exist in cases of domestic violence (UNDP & Ministry of Justice, 2011). A number of problems arise when mediation is utilized in cases of violence against women. It removes cases from legal scrutiny, presumes that both parties have equal

bargaining power, reflects an assumption that both parties are equally at fault for violence and reduces offender accountability.

## CONCLUSION

Internationally, it is recommended that mediation be prohibited in cases of VAW both before and during legal proceedings. However, there is extensive debate on whether mediation should be allowed in cases of domestic violence. It is argued that mediation is a viable option as long as there are procedural and substantive safeguards in place and the choice of mediation is left to the victim. To make an informed choice, victims must have knowledge of their rights and available legal measures as well as effective access to justice. Hence, mediation cannot be the only redress offered to victims of domestic violence or made mandatory at the pre or post litigation stages. Further, even if a woman opts for mediation in cases of violence, the law should contain provisions that ensure her protection and safety from further acts of violence during the course of mediation and after by ensuring that settlement terms are given effect to. Regard to both these aspects will serve to promote women’s agency and prevent re-victimization.

In the Lao context, resolutions reached through mandatory mediations are causing diversion from courts and criminal procedures. This may remove the recognition of domestic violence as a human rights violation. Further, allowing police to mediate in domestic violence cases may give rise to a conflict of interest if there is no resolution and criminal proceedings are required subsequently. The

police should be prohibited from conducting mediations or participating in mediation forums such as VMUs. Although, mediation may be by-passed in cases of severe violence, it has been observed that in the absence of specific guidelines on what constitutes serious forms of domestic violence, there is a scope for patriarchal attitudes influencing the determination of what constitutes a serious offence. It is therefore, important to respect the agency of the woman and understand her requirements prior to initiating any reconciliation processes.

It is important to distinguish between mediation and reconciliation. The goal of any mediation is to reduce conflict between the parties and not reconciliation. Reconciliation may be one of many outcomes of mediation and not the sole aim of any mediation. The context of domestic violence raises concerns of power and control where in the abuser holds considerable power over the victim. Mediators must be trained to be mindful of these concerns. It is recommended that reconciliation measures must be attempted only after the perpetrator demonstrates to the satisfaction of decision makers that no further acts of violence would be committed. Victims of domestic violence require more than legal protection and access to legal remedies. They need timely access to health care, shelter and support services to respond to short-term injuries be protected from further violations and address long-term needs. Minimum standards of services recommended are: telephone hotlines where women can get assistance over the phone and referrals to services and health care.

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