

REPORT

**Advisory Committee on
Reinforcement of Framework
for Protection against
Domestic Violence**

**Presented by Pierre Rosario Domingue
[Chair, Advisory Committee & CEO, Law
Reform Commission]**

[November 2014]

About the Advisory Committee

The Advisory Committee was constituted as follows:

- (a) Chairperson: Mr. Pierre Rosario Domingue [CEO, Law Reform Commission];
- (b) A Representative of the Ministry of Gender Equality, Child Development and Family Welfare [Mrs. J. Bhunjun, Head, Family Welfare and Protection Unit];
- (c) A Representative of the Ministry of Social Security, National Solidarity and Reform Institutions (Probation Service) [Mrs. A. Luckeenarain, later replaced by Mr. F. Moideen, Assistant Commissioner, Probation and Aftercare Service];
- (d) A Representative of Attorney-General's Office [Mrs. P. Ramjeeawon-Varma, Ag. Principal State Counsel];
- (e) A Representative of the Office of Director of Public Prosecutions (Victim Support Unit) [Mrs. J. Moutou-Leckning, Senior Assistant DPP, later replaced by Mrs. Z. Essop, State Counsel];
- (f) A Representative of the Commissioner of Police [Deputy Commissioner of Police, Mr. K.M. Nobin];¹
- (g) Four Representatives of Political Parties (Hon. Speaker of the National Assembly to designate two Members each from Government and Opposition) [Hon. Mrs. P.K. Bholah and Hon. Mr. J.H.T. Henry were appointed from Government; Hon. Mrs. S.B. Hanoomanjee and Hon. Mrs. L.N. Ribot were appointed from Opposition];
- (h) Two Representatives from the legal profession [Mrs. N. Bhundhun and Mrs. M.L. Lam Hung, Barristers-at-Law];
- (i) A Representative of the University of Mauritius [Mr. I. Koodoruth, Senior Lecturer];
- (j) Two Representatives of Civil Society (Gender Links and Men against Violence) [Mrs. A. Virahsawmy from Gender Links, and Mrs. J. Valls, CSK, from Men against Violence]; and
- (k) A Representative of Shelter SOS Femmes [Mrs. R. Gungaloo].

Mr. S. Kadel & Dr. G. Georgijevic, Officers of Law Reform Cadre at Law Reform Commission, were co-opted as Members.

Officers from the Ministry of Gender Equality, Child Development and Family Welfare provided assistance to the Committee for the holding of its meetings and were in attendance: Mrs. A.D. Poreema, Assistant Permanent Secretary; Mrs. D. Kripa, Office Management Assistant; Mrs K. Sobha-Rusmaully & Mr. Y. Deeda, Management Support Officers; Ms. L. Jupin, Ms. S. Doonmoon, Mrs. J. Grand-Port, Mrs. C. Fidele, and Ms. J. Emmamdeen, of the Family Welfare and Protection Unit.

¹ Mr. C. Bhojoo, Deputy Commissioner of Police, replaced DCP Mr. K.M. Nobin, who was overseas, at meetings of the Advisory Committee held in May and June 2014.

Mrs. M. Thomas, Officer in Charge of the Police Family Protection Unit, was designated to be in attendance at meetings of the Advisory Committee.

Executive Summary

The Advisory Committee on “Reinforcement of Framework for Protection against Domestic Violence” has reviewed our laws, policies and practices, from a human rights perspective and also in the light of Model Laws and Good Practices in legislation on gender-based violence.

The Committee is of the view that the current framework presents numerous lacunas and weaknesses. Changes are needed in order to make our laws compliant with human rights requirements and in accord with best international practices aimed at combating domestic violence and other forms of gender-based violence. The Advisory Committee considers that Legislation should be comprehensive and multidisciplinary, criminalizing all forms of violence, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological), as well as adequate punishment of perpetrators and availability of remedies for survivors. The fight against domestic violence must be made a national priority.

The Committee recommends that the following Measures be taken to reinforce the Framework:-

(1) Adopting a more Comprehensive Definition of Domestic Violence:

The Protection from Domestic Violence Act should provide a more comprehensive definition of domestic violence, so as to include all acts of physical, sexual, psychological or economic violence that occur within the family or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

(2) Further Criminalizing Forms of Domestic violence:

All forms of domestic violence should be criminalized, including the intentional conduct of seriously impairing the psychological integrity of a spouse or partner through coercion or threats.

Other circumstances can be provided in the Criminal Code as aggravating circumstances so as to provide for a harsher penalty. Circumstances, such as the relationship of the perpetrator and survivor (a former or current spouse or partner, a member of the family, a person cohabiting with the victim); the offence was committed *inter alia* against a person with special needs, a pregnant woman, or a person who, due to whatever reason, is incapable of resisting; a weapon was used; the act was committed in the presence of a minor; or in repeated incidents of domestic violence, regardless of the level of injury. Provision should be made in our Criminal Code that manslaughter committed by the spouse or partner of the victim is an aggravating circumstance.

Express provision should be made in our law that rape includes marital rape.

Section 242 of the Criminal Code, which provides that manslaughter committed by any person on his spouse, as well as on his accomplice, at the very moment he finds them in the act of adultery is excusable, should be repealed.

(3) Improving the Criminal Justice Response to Domestic Violence:

An effective crime prevention and criminal justice response needs to be put in place which is human rights-based and victim-centered, and which ensure offender accountability.

Legislation should provide for the establishment of specialized units in relevant criminal justice agencies: a specialized police unit, a specialized prosecutor unit (within the Office of the Director of Public Prosecutions). Provision must be made for adequate funding for their work and specialised training of their staff. Provision must also be made that complainants should have the option of communicating with female police officers or prosecutors.

Legislation should provide for the creation of a specialized domestic court guaranteeing timely and efficient handling of cases of violence.

Provision must be made for coordination between relevant criminal justice and victim support agencies and services.

Provision should also be made for the establishment of a Domestic Homicide Review Committee, which would review the circumstances in which the death of a person has, or appears to have, resulted from violence, abuse or neglect by a person to whom he was related or with whom he was or had been in an intimate personal relationship, or a member of the same household as himself, with a view to identifying the lessons to be learnt from the death.

Legislation should provide that a police officer, of a certain rank, may arrest without a warrant upon reasonable grounds of suspicion, a person who has committed an offence of domestic violence; or is about to commit an offence of domestic violence and there is no other way to equally effectively prevent the commission of the offence.

Provision must be made for offences relating to domestic violence to be instituted with consent of Director of Public Prosecutions.

Provision may also be made in our law for deferred prosecution agreements, whereby the Director of Public Prosecutions can enter into an agreement with an alleged perpetrator not to prosecute for a domestic violence offence, subject to the alleged perpetrator taking the commitment to attend a rehabilitation program and not to indulge in further acts of domestic violence; should the perpetrator fail to meet the requirements laid down in the agreement, prosecution would ensue.

Legislation should guarantee the Rights of Victims of domestic violence: Right to Privacy; Right to be Treated with Respect and Dignity; Right to be Represented and Assisted by a Law Practitioner at no Charge; Right to be Informed of all the Procedural Acts; Right to Cessation of Domestic Violence.

Legislation should provide for the possibility of prosecution in the absence of the complainant, where the complainant is not able or does not wish to give evidence.

(4) Affording Better Protection, Support and Assistance to Victims:

Legislation should provide additional funding, including allocating a specific budget to non-governmental organizations for a specified range of activities, for the availability/accessibility of comprehensive and integrated support services to assist victims/survivors of domestic violence.

Provision must be made for One-stop (Integrated) Service Centres, which involves bringing together services in one location, often called the “One-stop centre”, an inter-agency unit for victim/survivors of domestic or sexual violence.

Provision must also be made for a Coordinated Community Response to domestic violence (collaboration and information sharing should regularly take place across a large number of agencies, at minimum law enforcement, health care, child welfare and social services agencies so as to meet the needs of domestic violence survivors). Consideration may be given to the introduction of a Domestic Violence Disclosure Scheme (DVDS), which will give members of the public a formal mechanism to make enquiries about an individual who they are in a relationship with, or who is in a relationship with someone they know, where there is a concern that the individual may be violent towards their partner.

Perpetrator programs, in the form of psychological counseling, should be further developed and implemented in close coordination with services for victims/survivors. Training afforded to the professionals in the Ministry of Gender Equality, Child Development and Family Welfare dealing with victims or perpetrators of acts of domestic violence should be strengthened.

Special measures should be taken for the economic empowerment of victims/survivors of domestic violence in order to meet their needs.

Legislation should allow immigrants who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator (including the right to divorce and to obtain independent immigration status).

Legislation should impose on public authorities, NGOs, and health care providers, who in the course of their work find circumstances from which it is possible to infer there is an alleged domestic violence offence, the duty to report same to an Enforcement Authority.

Legislation should provide that an Enforcement Officer may, with the consent of any person who is the alleged victim of an act of domestic violence (not just an aggrieved spouse), file on his behalf an application for a protection, occupancy or tenancy order. Provision should also be made that an Enforcement Officer may make the application on behalf of a victim when the latter is bedridden or severely injured.

Legislation should provide relevant officials with the authority to order a respondent out of the home to stay away from the survivor in a Rehabilitation Centre for Domestic Violence Abusers.

Legislation should provide that protection orders may contain the following measures: directing the respondent to seek counseling or other rehabilitative service; ordering the respondent to provide financial assistance to the complainant/survivor, including payment of medical bills, counselling fees or shelter fees, monetary compensation, and in addition, mortgage, rent, insurance; imposing mandatory rehabilitation of an abusive offender, who has committed an act of domestic violence under the influence of alcohol or drugs or other psychotropic substances; prohibiting the respondent from purchasing, using or possessing a firearm or any such weapon specified by the court; requiring that the movements of the respondent be electronically monitored.

Legislation should include, *inter alia*, the following provisions regarding child custody and visitation in protection order proceedings: Presumption against award of

custody to the perpetrator; Presumption against unsupervised visitation by the perpetrator; Requirement that, prior to supervised visitation being granted, the perpetrator must show that he has stopped using any form of violence and that he is participating in a treatment programme for perpetrators; and no visitation rights are to be granted against the will of the child.

Legislation should protect the employment rights of survivors of violence against women, including by prohibiting employers from discriminating against them or penalizing them for the consequences of their abuse.

Provision must also be made for housing facilities for victims of domestic violence, who have had to leave their house with their children; school transfer facilities must be made available to children who have had to change residence as a result of domestic violence in the family.

(5) Providing Adequate Redress/Reparation for Victims:

Legislation should permit complainants/survivors of domestic violence to bring civil lawsuits against perpetrators for the award of damages in respect of the personal injuries or damage to property or financial loss as a result of the domestic violence. Legislation should make provision for the creation of a Victims of Domestic Violence Support Fund, which entitles survivors of domestic violence to apply and receive basic material support and a fair amount of compensation.

A Monument could be erected in remembrance of persons who passed away as victims of domestic violence.

(6) Consolidating Preventive Mechanisms:

Legislation should mandate further government support and funding, in collaboration with NGOs, for public awareness-raising campaigns on domestic violence and other forms of gender-based violence.

Public officials and other professionals should receive regular and institutionalized gender-sensitivity training and capacity-building on domestic violence.

Sensitization programs aimed at men and boys should be further developed. Legislation should provide for compulsory education at all levels of schooling, from kindergarten to the tertiary level, on the human rights of women and girls, the promotion of gender equality, and in particular, the right of women and girls to be free from violence; that such education be gender-sensitive and include appropriate information regarding existing laws that promote women's human rights and address violence against women; and that relevant curricula be developed in consultation with civil society.

Resources must be further mobilized for work with non-elected community leaders, religious leaders and faith-based groups, neighbourhood associations, teachers, local businesses and others at the local level to build "communities of support" against any form of gender-based violence.

(7) Improving Monitoring/Evaluation:

The Domestic Violence Information System (DOVIS) must be made operational.

Legislation should strengthen mechanisms for systematic and coordinated data collection on domestic violence; provide for population-based surveys, including crime surveys, for assessing the nature and extent of domestic violence.

Data and information should be collected, analyzed, including data and information disaggregated by gender, for use in carrying out needs assessments, taking decisions and developing policy in the field of crime prevention and criminal justice, in particular concerning: the different forms of violence, the causes, risk factors and levels of severity of such violence; the consequences and impacts of such violence, including on different population subgroups; the extent to which economic deprivation and exploitation are linked to domestic violence; the effect of various types of intervention on the individual offender and on the reduction and elimination of violence; the use of weapons and of drugs, alcohol and other substances in cases of domestic violence; the relationship between victimization or exposure to violence and subsequent violent activity; the consequences of violence on those who witness it, particularly within the family.

Legislation should provide for the monitoring, and publication of annual reports on, the number of cases of domestic violence reported to the police as well as other criminal justice agencies, including arrest, prosecution and case disposition of the offenders. Provision must be made for the evaluation of the efficiency and effectiveness of the criminal justice system in meeting the needs of victims subjected to violence, including with regard to the way in which the criminal justice system treats victims and witnesses of acts of violence, the use it makes of different intervention models and the degree to which it cooperates with providers of services to victims and witnesses, as well as to evaluate and assess the impact of current legislation, rules and procedures relating to domestic violence. Provision must be made also for the evaluation of the efficiency and effectiveness of offender treatment, rehabilitation and reintegration programmes, in consultation with relevant stakeholders, including victims and victim service providers.

Legislation should provide for the development of a set of indicators to measure violence against women and to ensure a multisectoral, coordinated approach to the development, implementation, monitoring and evaluation of data collection initiatives.

Provision must be made for sufficient financial support for research to be carried out on violence against women.

Legislation should provide for the creation of a specific, multi-sectoral mechanism to oversee implementation of the legislation and report back to Parliament on a regular basis. The functions of such a mechanism should include: information gathering and analysis; interviews with complainants/survivors, law practitioners, police, prosecutors, judicial officers, probation officers and service providers regarding complainants/survivors' access to the legal system and the effectiveness of remedies, including obstacles faced by particular groups; and the proposal of amendments to legislation if necessary.

Dedication

This Report is dedicated to late **Mrs. Rada Gungaloo**, Barrister-at-Law and a Member of the Advisory Committee, for her laudable efforts to fight the scourge of domestic violence in our society and provide assistance to victims.

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- (1) UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 12 (1989) Violence against Women
- (2) UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 12 (1992) Violence against Women
- (3) UN Declaration on the Elimination of Violence against Women [A/RES/48/104, 20 December 1993]
- (4) Beijing Declaration and Platform for Action [15 September 1995] - Strategic Objectives D1 and D2 relating to “Violence against Women”
- (5) Report of UN Special Rapporteur on Violence against Women, its Causes and Consequences - A Framework for Model Legislation on Domestic Violence [E/CN.4/1996/53/Add.2]
- (6) UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice [A/RES/65/228, 21 December 2010]
- (7) Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará" [19 June 1994]
- (8) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence “Istanbul Convention” [11 May 2011]
- (9) Council of Europe Parliamentary Assembly Recommendation 1582 (2002) Domestic Violence against Women
- (10) SADC Prevention and Eradication of Violence against Women and Children (Addendum to the 1997 SADC Declaration on Gender and Development) [14 September 1998]
- (11) CARICOM “Model Legislation on Domestic Violence” [2011]
- (12) Johns Hopkins University & Suzanne Mubarak Regional Centre for Women’s Health and Development “Model Law against Domestic Violence” [2009]

(I) The Composition and Terms of Reference of the Advisory Committee

1. On 7 March 2014, Cabinet took note of the setting up, on a *pro bono* basis, of an Advisory Committee to make recommendations on measures to reinforce the framework for the protection from domestic violence, including amendments to be made to the Protection from Domestic Violence Act.
2. The Advisory Committee on Reinforcement of Framework against Domestic Violence was established with the following Terms of Reference:
 - (a) To examine the existing national legal framework with regard to protection from domestic violence, including the Protection from Domestic Violence Act, and identify potential gaps in the protection mechanism in the law;
 - (b) To propose legislative amendments, in view of providing a more comprehensive framework for the protection and assistance of victims of domestic violence, as well as on effective prevention, intervention, investigation and prosecution of domestic violence cases;
 - (c) To propose policy, administrative and other measures to reinforce the framework for protection from domestic violence; and
 - (d) To examine the roles of major stakeholders involved in combating domestic violence and propose measures to make their roles more efficient and effective.
3. On 3 April 2014, the Minister of Gender Equality, Child Development and Family Welfare, Hon. Mrs. M. Martin, made the following statement in the National Assembly regarding the establishment of the Advisory Committee:

“Mr. Speaker, Sir, I wish to make a statement on the issue of gender-based violence (GBV) in view of the latest cases that have emerged as a violation of human rights. For more than three decades, right from the Third World Conference on Women in 1985 to the Beijing Platform for Action (1995) and to various UN consultations for the Post-2015 Sustainable Development Goals, the United Nations Commission on the Status of Women (UNCSW), the UN Women and other UN standing working groups have constantly been reaffirming the pressing need to address gender-based violence.

I recently attended the 58th session of the UN Commission on the Status of Women (CSW) in New York, where the thematic of violence against women was addressed as one of the main areas of concern. The Agreed Conclusions of this meeting once again flagged out that violence against women, I quote - “continues to occur in all parts of the world and that all forms of violence against women and girls are impediments to the development of their full potential as equal partners with men.”

Mr. Speaker, Sir, I wish to reiterate my determination and commitment to review and align my Ministry’s policies, programs and services to respond to the Agreed Conclusions of UN Commission on the status of Women as well as the other Treaties, Conventions and Human Rights instruments that speak to the elimination and prevention of violence against women.

To that end, I wish to inform the House that I have set up an Advisory Committee on the Reinforcement of Framework for the Protection of Domestic Violence ... The main task of the Committee will include, inter alia, the review of the Protection from Domestic Violence Act so as to make it more responsive to the protection of victims as well as improving the framework catering for the rehabilitation and/or for the prosecution of perpetrators. The Committee will also recommend new policy orientation and strengthen the role of major stakeholders involved in combating domestic violence.

I had a meeting with the Chairperson and members of the Advisory Committee on 13 March 2014 to finalize its modus operandi ...

Concurrently, a press communiqué has been issued in March 2014 by my Ministry inviting NGOs and interested parties to submit views, comments and proposals on this issue.

Mr. Speaker, Sir, acting collectively to the realization of human rights instruments will ultimately lead to sustainable development and ensuring that the prevalence of gender-based violence is the concern of each one of us.”

4. The Advisory Committee was constituted as follows:

- (1) Chairperson: Mr. P.R. Domingue [CEO, Law Reform Commission];
- (2) A Representative of the Ministry of Gender Equality, Child Development and Family Welfare [Mrs. J. Bhunjun, Head, Family Welfare and Protection Unit];
- (3) A Representative of the Ministry of Social Security, National Solidarity and Reform Institutions (Probation Service) [Mrs. A. Luckeenarain, later replaced by Mr. F. Moideen, Assistant Commissioner, Probation and Aftercare Service];
- (4) A Representative of Attorney-General's Office [Mrs. P. Ramjeeawon-Varma, Ag. Principal State Counsel];
- (5) A Representative of the Office of Director of Public Prosecutions (Victim Support Unit) [Mrs. J. Moutou-Leckning, Senior Assistant DPP, later replaced by Mrs. Z. Essop, State Counsel];
- (6) A Representative of the Commissioner of Police [Deputy Commissioner of Police, Mr. K.M. Nobin];²
- (7) Four Representatives of Political Parties (Hon. Speaker of the National Assembly to designate two Members each from Government and Opposition) [Hon. Mrs. P.K. Bholah and Hon. Mr. J.H.T. Henry were appointed from Government; Hon. Mrs. S.B. Hanoomanjee and Hon. Mrs. L.N. Ribot were appointed from Opposition];
- (8) Two Representatives from the legal profession [Mrs. N. Bhundhun and Mrs. M.L. Lam Hung, Barristers-at-Law];
- (9) A Representative of the University of Mauritius [Mr. I. Koodoruth, Senior Lecturer];

² Mr. C. Bhojoo, Deputy Commissioner of Police, replaced DCP Mr. K.M. Nobin who was overseas, at meetings of the Advisory Committee held in May and June 2014. Mrs. M. Thomas, Officer in Charge of the Police Family Protection Unit, was designated to be in attendance at meetings of the Advisory Committee.

- (10) Two Representatives of Civil Society (Gender Links and Men against Violence)
[Mrs. A. Virahsawmy from Gender Links, and Mrs. J. Valls, CSK, from Men
against Violence]; and
- (11) A Representative of Shelter SOS Femmes [Mrs. R. Gungaloo].

Two Officers of Law Reform cadre at the Law Reform Commission, Mr. S. Kadel & Dr. G. Georgijevic, were co-opted as Members by the Advisory Committee at its first meeting.

- 5. The Advisory Committee held seven meetings to discuss aspects of the current framework in need of change.³ The Advisory Committee also had a meeting on 4 July 2014 with Ms. M. Edwards, Senior Sergeant, Australian Northern Territory Police, to be apprised of measures taken by police in Australia's Northern Territory to combat domestic violence and other forms of gender-based violence.⁴

³ The Advisory Committee met on 4 April, 25 April, 9 May, 30 May, 13 June, 4 July and 24 October 2014. Some Members submitted, for consideration by the Committee, written proposals on aspects of the current framework requiring change: (a) Mrs. J. Bhunjun, Head, Family Welfare and Protection Unit [Representative of the Ministry of Gender Equality, Child Development and Family Welfare]; (b) Mr. I. Koodoruth [Representative of the University of Mauritius]; (c) Mrs. P. Ramjeeawon-Varma [Representative of Attorney-General's Office]; and Mrs. J. Valls, CSK [Representative of Men against Violence].

⁴ Ms. M. Edwards, visited Mauritius – at the invitation of the Australian High Commission - to conduct a Capacity Building Program on 01 and 02 July 2014 about measures taken by Police in Australia's Northern Territory to combat domestic violence and other forms of gender based violence: *vide* Australian Northern Territory Police Domestic and Family Violence Strategy 2012-2014 (Project Respect).

(II) The Review Methodology

6. The provisions of the Protection from Domestic Violence Act, as well as other provisions of relevance (such as provisions of the Criminal Code) were examined from a human rights perspective⁵ and also in the light of Model Laws and Good Practices in legislation on gender-based violence.⁶ The laws and practices in other jurisdictions were also

⁵ At UN level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [GA resolution 34/180 of 18 December 1979, which came into force on 3 September 1981], the General Recommendations Nos. 12 (1989) and 19 (1992) of the UN Committee on the Elimination of Discrimination against Women on “Violence against Women”, the UN General Assembly Declaration on the Elimination of Violence against Women of 20 December 1993 [A/RES/48/104], the UN General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women [Res. 52/86] and the UN General Assembly Resolution [Res. 65/228, adopted on 21 December 2010, with “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice”], as well as the Beijing Declaration and Platform for Action (adopted on 15 September 1995 at the United Nations Conference on Women) were considered.

At regional level, the following human rights instruments were examined:

- (a) The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (known as the “Convention of Belém do Pará”) [adopted on 9 June 1994];
- (b) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted in Istanbul on 11 May 2011), as well as the various Recommendations and Resolutions adopted by its Parliamentary Assembly [such as Recommendation 1582 on Domestic Violence against Women (adopted on 27 September 2002), Recommendation 1450 on Violence against women in Europe (adopted on 3 April 2000), Recommendation 1759 and Resolution 1512 on “Parliaments united in combating domestic violence against women” (adopted on 28 June 2006), as well as Recommendation 1817 and Resolution 1582 on “Parliaments united in combating domestic violence against women: mid-term assessment of the campaign” (adopted on 5 October 2007)] and Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence;
- (c) The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa [adopted on 11 July 2003], the Southern African Development Community (SADC) Declaration on Gender and Development (1997) and the Addendum thereto relating to “Prevention and Eradication of Violence against Women and Children” (adopted at Grand Baie on 14 September 1998).

⁶ The Committee considered the 1996 UN Special Rapporteur Report on Violence against Women, its Causes and Consequences, regarding “*A framework for model legislation on domestic violence*” [E/CN.4/1996/53/Add.2], the Report of the UN Expert Group Meeting on “Good Practices in Legislation on Violence against Women”: *vide* UN *Handbook for Legislation on Violence against Women* (2010). The UN Expert Group Meeting on “Good Practices in Legislation on Violence against Women” [meeting convened by UN Division for the Advancement of Women & UN Office on Drugs and Crime, which met on 26 to 28 May 2008] reviewed and analyzed experiences, approaches and good practices in legislation on violence against women from around the world, and developed a model

considered.⁷ The presentations at the Workshop organized on 28-30 January 2014 about “Intra-Family Violence: Children and Other Vulnerable Victims in the Criminal Justice System”, by US Department of Justice and OPDAT with the support of the US Embassy in Mauritius and the collaboration of the Institute of Judicial and Legal Studies, were examined.

framework for legislation. The Expert Group Meeting considered the goal of legislation should be to prevent violence against women, to ensure investigation, prosecution and punishment of perpetrators, and to provide protection and support for complainants/survivors of violence. According to the Expert Group Meeting, inclusive consultation with all stakeholders who are either affected by or will implement legislation is a key element of the preparatory process. It ensures that the realities of women who experience violence are accurately portrayed and that the legislative response is appropriate. It also enhances the potential for legislation to be implemented effectively. The Expert Group Meeting also highlighted the importance of drawing on reliable evidence in the preparation of legislation. This includes data and research on the scope, prevalence and incidence of all forms of violence against women, on the causes and consequences of such violence, and on lessons learned and good practices from other countries in preventing and addressing violence against women. Such an evidence-based approach ensures that the development and design of legislation is well-informed and can enhance the quality and potential future effectiveness of legislation. The Expert Group Meeting emphasized the need for coordinated and gender-sensitive implementation of legislation. The Expert Group Meeting highlighted the importance of coordination among entities (such as the judiciary, police, prosecutors, probation, advocacy groups, providers of services to complainants/survivors, and social service agencies), at all levels of government, and between government and civil society, to ensure the thorough and gender-sensitive implementation of legislation. In the past, many countries have coordinated responses regionally or locally, but not at all levels. Under the coordinated community response, or “Duluth Model” (introduced in Duluth, Minnesota, United States of America), members of key sectors, including law enforcement, advocates, health care providers, child protection agencies, local businesses, media, employers and faith-based leaders, seek to coordinate their activities to better protect and support survivors of domestic violence. The coordinated community response helps ensure that the system works more effectively and efficiently for victims, better protects and provides victims with the services they need, and holds perpetrators accountable. Vide also UN Women, *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries based on International Standards and Good Practices* (2011).

The 2011 Caribbean Community (CARICOM) *Model Legislation on Domestic Violence* was also taken into account, as well the 2009 Model Law on Violence against Women, developed by the Johns Hopkins University (Protection Project) and the Suzanne Mubarak Regional Centre for Women’s Health and Development.

⁷ The laws in Australia, New Zealand, US, UK, Ireland, France, South Africa, India and Hong Kong were examined. For a comparative overview of domestic violence laws and policies in various countries of the world, updated as of 2 February 2010, vide <http://www.hsph.harvard.edu/population/domesticviolence/domesticviolence.htm>

For information and comparative discussion on domestic violence laws, vide also National Council to Reduce Violence against Women and their Children, *Domestic Violence Laws in Australia* (2009); Council of Europe, *Legislation in the Member States of the Council of Europe in the field of Violence against Women* (2009) vols 1 to 3; International Centre for Criminal Law Reform and Criminal Justice Policy, *Compendium Model Strategies and Practical Measures On The Elimination of Violence Against Women In The Field of Crime Prevention and Criminal Justice* (1999).

7. Studies on the phenomenon of domestic violence in Mauritius,⁸ policies worked out and actions taken by the Ministry of Gender Equality, Child Development and Family Welfare to eradicate the phenomenon,⁹ and views of public and stakeholders were also considered.¹⁰

⁸ Mauritius Research Council, *A Study on the Extent, Nature and Costs of Domestic Violence to the Mauritian Economy* (2010); Gender Links, *Gender Based Violence Indicators Study - Mauritius Country Report* (2012); KPMG, *Criminological Research on Domestic Violence* (2000).

Vide also K.A. Jansen, "Abuse and suffering: a remark on bodies, domestic violence and battered women's coping strategies in Mauritius" (2005).

⁹ The 2007-2011 National Action Plan to Combat Domestic Violence and the 2012-2015 Costed National Action Plan to End Gender-Based Violence were considered.

Particular attention was devoted to the Victim Empowerment and Abuser Rehabilitation Policy (VEARP) Framework, devised in fulfilment of the strategic objective enunciated in the Actions Plans of ensuring that we have a Mauritian society where Victims receive the support and justice they deserve and perpetrators are held accountable and provided with the opportunity to change their behavior, and meant to sensitize employees and employers on gender-based violence. *Vide* Training Manual (as well as the Training Kit Facilitator's Guide) devised by the Ministry in 2013.

The 2009 Report on "Audit of Existing Services and Care provided in Family Support Bureaux and Shelters" was also examined.

The 2001 Report of the Task Force, chaired by Mrs. P. Patten, Bar-at-Law, and set up by Government to review, *inter alia*, laws which are discriminatory towards women and the procedures for the enforcement of the Protection from Domestic Violence Act, was also considered.

Reports that have been submitted to the Ministry in the past were also examined: *vide* Commonwealth Secretariat, *Model Framework for an Integrated Approach to Combat Violence against Women and the Girl Child* (1999); *Report on Survey of Domestic Violence in Mauritius* (1998); T. Mendelsohn, *Prevention of Violence against Women in Mauritius: Report on Policy, Program and Service Measures* (1995) [a Project funded by UNICEF Australia and Australian International Development Assistance Bureau].

¹⁰ *Vide* views of the Director of Public Prosecutions, Mr. S. Boolell, SC, in an article entitled "Putting an end to domestic violence" (published in l'Express newspaper on 7 March 2014 at p. 9). *Vide* also M.J. Genave, "Asymétrie des rapports de force au sein de la cellule familiale et abus de pouvoir" (ODPP Newsletter, May 2014, Issue 36); C. Canabady, « Vaincre la violence domestique – Mes douze suggestions » (Le Mauricien, 19 March 2014, at p. 12].

The Committee also took note of views expressed by District Magistrates, as to measures for improving the current framework, at a meeting held on Friday 21 February 2014 at 1450 hrs in the Office of the Master and Registrar, Supreme Court.

Discussions at the *Assises de la Famille*, held on 28 to 30 April 2014, by stakeholders from both the public and private sectors as well as from the civil society, in particular on the sub-themes "Identifying gaps in the national legal framework on family protection", "Critical appraisal of measures taken to address domestic violence", and "Women economic independence and family welfare", have been considered.

The work that can be done, as part of the community policing program for the implementation of the National Policing Strategic Framework (NPSF), by the Police at station level to help alleviate the problem of domestic violence has been noted (in particular work to that effect carried out at La Tour Koenig Police Station).

8. Issues raised in Parliamentary questions by Honourable Members of the National Assembly have been examined. These relate *inter alia* to:

- (a) Adequacy of measures taken to combat domestic violence;¹¹
- (b) Appropriateness of the current legislative framework;¹²
- (c) Magnitude of the problem;¹³

¹¹ PQ B/679 (11 December 2012) [Hon. Mrs. S. B. Hanoomanjee (Second Member for Savanne & Black River) asked the Minister of Gender Equality, Child Development and Family Welfare whether, in regard to the women, she will state the measures taken by her Ministry in the wake of the campaign initiated by the United Nations and the African continent to end violence against them];

PQ B/331 (21 May 2013) [Hon. Mrs. L. Ribot (Third Member for Stanley & Rose Hill) asked the Minister of Gender Equality, Child Development and Family Welfare whether, in regard to the National Action Plan to Combat Domestic Violence, she will state the objectives thereof which have not yet been implemented, indicating the timeframe set for the implementation thereof];

PQ A/144 (28 May 2013) [Hon. Mrs. L. Ribot (Third Member for Stanley & Rose Hill) asked the Minister of Gender Equality, Child Development and Family Welfare whether, in regard to the National Domestic Violence Committee, she will, for the benefit of the House, obtain therefrom, information as to the (a) composition thereof, indicating the name of the Chairperson thereof and his date of appointment; (b) number of meetings held, indicating the date of the last meeting, and (c) recommendations thereof, if any];

PQ B/13 (25 March 2014) [Hon. Mr. V. Baloomoody (Third Member for Grand River North West and Port Louis West) asked Hon. Prime Minister, Minister of Defence, Home Affairs and External Communications, Minister for Rodrigues whether, in regard to the recent reported cases of violence, especially those committed against women, he will, for the benefit of the House, obtain from the Commissioner of Police, information as to if inquiries have been carried out as to the root cause thereof, indicating the measures taken or that will be taken, in relation thereto, if any?];

PQ B/220 (13 May 2014) [Hon. Mrs. Ribot (Third Member for Stanley and Rose Hill) asked the Hon. Minister of Gender Equality, Child Development and Family whether, in regard to the 2007 National Action Plan to Combat Domestic Violence, she will state if, to ensure the effective implementation thereof, an evaluation exercise has been carried out and, if so, indicate the findings thereof?]

¹² PQ B/1252 (1 December 2009) [Hon. Mr. S. Soodhun (Fifth Member for La Caverne & Phoenix) asked the Prime Minister, Minister of Defence and Home Affairs whether, in regard to cases of violence against women, including sexual offences, he will state if Government will consider the advisability of (a) introducing measures to ensure that the criminal justice system, including rules of evidence and procedure, encourages women to testify in Court proceedings regarding violence against them, and (b) making provision for tougher punishment of the perpetrators of all forms of violence against women];

PQ B/26 (23 March 2010) [Hon. Mrs. S. Hanoomanjee (Second Member for Savanne & Black River) asked the Attorney General whether, in regard to the protection from domestic violence, he will state if Government proposes to amend the existing legislation with a view to strengthening the implementation thereof].

- (d) Effectiveness of awareness programs run;¹⁴
- (e) Efficacy of protection afforded to victims;¹⁵ and
- (f) Nature of assistance afforded to victims.¹⁶

¹³ PQ B/897 (17 November 1998) [Hon. Mrs. A. Navarre-Marie (Third Member for G.R.N.W. and Port Louis West) asked the Minister of Women, Family Welfare and Child Development whether she will say if a survey has been conducted on the recurrence of domestic violence and its causes during the period 01 November 1997 to 31 May this year and, if so, will she make a statement on the outcome thereof];

PQ B/1037 (5 August 2008) [Hon. Mrs F. Jeewa-Daureeawoo (Third Member for Stanley and Rose Hill) asked the Prime Minister, Minister of Defence & Home Affairs, Minister of Civil Service & Administrative Reforms and Minister of Rodrigues & Outer Islands whether, in regard to domestic violence, he will, for the benefit of the House, obtain from the Commissioner of Police, information as to the number of reported cases thereof, since January 2007 to date];

PQ B/11 (31 March 2009) [Hon. Mrs F. Jeewa-Daureeawoo (Third Member for Stanley & Rose Hill) asked the Prime Minister, Minister of Defence and Home Affairs whether, in regard to domestic violence against women, he will, for the benefit of the House, obtain from the Commissioner of Police, information as to the number of reported cases thereof, since January 2008 to date];

PQ B/688 (30 June 2009) [Hon. Mr. S. Soodhun (Fifth Member for La Caverne & Phoenix) asked the Minister of Women's Rights, Child Development and Family Welfare whether in regard to domestic violence, she will state the number of cases reported to her Ministry, since 2005 to date, on a yearly basis, indicating in each case the number of protection and occupation orders issued].

¹⁴ PQ B/153 (7 April 2009) [Hon. Mrs. F. Labelle (Third Member for Vacoas and Floreal) asked the Minister of Women's Rights, Child Development and Family Welfare whether, in regard to the sensitisation programme for the alleviation of domestic violence, she will state (a) how it is being implemented; (b) the targeted audience; and (c) the resource persons available];

PQ A/143 (28 May 2013) [Hon. Mrs L. Ribot (Third Member for Stanley & Rose Hill) asked the Minister of Gender Equality, Child Development and Family Welfare whether, in regard to the Zero Tolerance Clubs to combat domestic violence, she will, for the benefit of the House, obtain information as to the (a) number and location thereof; (b) total number of members thereof; (c) name of the coordinator thereof, if any; and (d) mechanism to ensure uniformity in the activities thereof].

¹⁵ PQ B/1237 (4 December 2007) [Hon. Mrs F. Labelle (Third Member for Vacoas and Floreal) asked the Prime Minister, Minister of Defence & Home Affairs, Minister of Civil Service & Administrative Reforms and Minister of Rodrigues & Outer Islands whether, in regard to reported alleged cases of domestic violence since 2002 to date, he will, for the benefit of the House, obtain from the Commissioner of Police, information as to (a) the number thereof; (b) the number of spouses who have (i) been assaulted while being under the protection of a Protection Order, and (ii) passed away as a result thereof while being under the protection of a Protection Order];

PQ B/111 (5 April 2011) [Hon. Mrs. L. Ribot (Third Member for Stanley & Rose Hill) asked the Prime Minister, Minister of Defence, Home Affairs and External Communications whether, in regard to domestic violence, he will, for the benefit of the House, obtain from the Commissioner of Police, information as to the number of reported cases thereof, since January 2008 to date, indicating the number of spouses who have been assaulted whilst being under a Protection Order and passed away as a result thereof].

¹⁶ PQ B/28 (23 March 2010) [Hon. Mrs. S. Hanoomanjee (Second Member for Savanne & Black River) asked the Minister of Women's Rights, Child Development and Family Welfare whether, in regard to women who have been

9. New approaches and innovative strategies adopted in other jurisdictions have also been considered. The focus has been, in particular, on developments in:

(a) Australia;¹⁷

(b) UK;¹⁸

victims of violence, she will state the number of cases thereof reported to her Ministry, since January 2006 to date, indicating the number thereof who (a) were not in gainful employment, (b) have been provided training to enable them join the labour market, and (c) have ultimately joined gainful employment];

PQ A/16 (25 March 2014) [Hon. Mrs. Ribot (Third Member for Stanley and Rose Hill) asked the Hon. Minister of Gender Equality, Child Development and Family whether, in regard to domestic violence, she will state the number of reported victims thereof, since 2005 to date, indicating if they have been provided, if required, with (a) assistance to find employment and (b) financial assistance and, if so, indicate the quantum and duration thereof?];

PQ B/81 (1 April 2014) [Hon. Mrs. Ribot (Third Member for Stanley and Rose Hill) asked the Hon. Minister of Gender Equality, Child Development and Family whether, in regard to the legal aid available to the victims of domestic violence, she will state the (a) number of beneficiaries thereof, since 2010 to date and (b) eligibility criteria therefor?];

PQ A/64 (13 May 2014) [Hon. Mrs. Ribot (Third Member for Stanley and Rose Hill) asked the Hon. Minister of Gender Equality, Child Development and Family whether, in regard to the Legal Advice Unit of her Ministry, she will state the (a) names of the resource persons thereof who are paid on a sessional basis to help in the cases of victims of domestic violence and (b) amount of money paid out thereto in each case, since 2010 to date?]

¹⁷ In Australia, *vide* 2011 National Plan to Reduce Violence against Women and their Children, and the Second Action Plan 2013-2016. *Vide* also J. Breckenridge & J. Hamer, *Traversing the maze of 'Evidence' and 'Best Practice' in Domestic and Family Violence Service Provision in Australia* [2014, Australian Domestic & Family Violence Clearing House]; K. Wilcox, *Recent Innovations in Australian Protection Order Law – A Comparative Discussion* [2010, Australian Domestic & Family Violence Clearing House]; L. Mitchell, *Domestic Violence in Australia – an Overview of the Issues* [2011, Parliament of Australia (Social Policy Section)]; Australian Law Reform Commission, *Final Report Family Violence – A National Legal Response* (2010); Law Reform Commission of Western Australia, *Discussion Paper Enhancing Family and Domestic Violence Laws* (2013).

¹⁸ In UK, *vide* Home Office, Safety and Justice: The Government's Proposals on Domestic Violence (2003, Cm 5847); Home Office, *Developing Domestic Violence Strategies – A Guide for Partnerships* (2004); Crown Prosecution Service, *Domestic Violence – Good Practice Guidance* (2005); Crown Prosecution Service, *A Guide to Going to Court For the Victim of Domestic Violence and Abuse* (2011); Department of Health, *Responding to Domestic Abuse – A Handbook for Health Professionals* (2006); Home Office, *Multi-Agency Guidance for Addressing Domestic Violence* (2006); Home Office, *Call to End Violence against Women and Girls* (2010); Home Office, *Definition of Domestic Violence – A Consultation* (2011); Home Office, *Domestic Violence Disclosure Scheme – A Consultation* (2011); Home Office, *Domestic Homicide Reviews: Common Themes Identified as Lessons to be Learned* (2013); HMIC, *Improving the Police Response to Domestic Abuse* (2014).

Vide also A. Matczak & ors, *Review of Domestic Violence Policies in England and Wales* (London: Kingston University and St George's, University of London, 2011); L. Heise, *What works to Prevent Partner Violence? An Evidence Overview* (Centre for Gender Violence and Health, London School of Hygiene and Tropical Medicine,

- (c) Ireland;¹⁹
- (d) France;²⁰ and
- (e) US.²¹

2011); D. Cook et al, *Enhancing Safety and Justice: The Role of Specialist Domestic Violence Courts in England and Wales* (British Society of Criminology, 2005).

Regarding Community Domestic Violence Programs (CDVP), vide P. Weatherstone, *Domestic Violence Programs in England and Wales* (Ministry of Justice, National Offender Management Service, 2010); K. Bullock & ors, *The delivery of domestic abuse programmes: An implementation study of the delivery of domestic abuse programmes in probation areas and Her Majesty's Prison Service* (Ministry of Justice Research Series 15/10, 2010).

The Chair of the Advisory Committee would wish to thank Ms. S. Shaw, Accredited Programs Facilitator, who has been working from August 2005 to May 2013 for the National Probation Service (Merseyside Probation Trust), for sharing her experience about the running of CDVPs (2008-2013).

¹⁹ In Ireland, vide N. Kearns et al, *Domestic Violence in Ireland: an overview of national strategic policy and relevant international literature on prevention and intervention initiatives in service provision* (Child and Family Research Centre, Department of Political Science and Sociology, National University of Ireland, Galway, 2008); Law Reform Commission of Ireland, *Report Aspects of Domestic Violence* (2013).

²⁰ In France, vide F. Laborde, *Rapport d'Information sur la proposition de loi, adoptée par l'Assemblée Nationale, renforçant la protection des victimes et la prévention et la répression des violences faites aux femmes et sur la proposition de loi relative aux violences au sein des couples et aux incidences de ces dernières sur les enfants* (Sénat, 2010, r09-5531); E. Gueugneau & M. Orphé, *Les violences faites aux femmes et l'application de la loi du 9 juillet 2010 relative aux violences familiales - Contribution en vue du projet de loi pour l'égalité entre les femmes et les hommes* (2013, Assemblée Nationale) ; G. Colot, *Les violences faites aux femmes et aux enfants dans l'espace intime* (Rapporteur du Réseau des Femmes Parlementaires, Assemblée Parlementaire de la Francophonie, 2010).

²¹ In US, vide D. Kiesel, *Domestic Violence: Law, Policy and Practice* (2011, Matthew Bender & Company, Inc.); National Institute of Justice (NIJ), *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges* (2009); NIJ, *Compendium of Research on Violence against Women* (2008); D. Hirschel et al., "Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions" (2007) 98 *Journal of Criminal Law & Criminology* 255-298; R. Iyengar, *Does the certainty of arrest reduce domestic violence? Evidence from mandatory and recommended arrest laws* (2007, National Bureau of Economic Research, Massachusetts); Institute for Law and Justice (ILJ), *Domestic Violence: A Review of State Legislation Defining Police and Prosecution Duties and Powers* (2004); N. Durborow et al., *Compendium of State Statutes and Policies on Domestic Violence and Health Care* (2010, Family Violence Prevention Fund); Child Welfare Information Gateway, *Child witnesses to domestic violence – State Statutes* (2013, U.S. Department of Health and Human Services, Children's Bureau); J.D. Osofsky, "Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention" (2003) 6 *Clinical Child and Family Psychology Review* 161-170; M. Labriola et al, *National Portrait of Domestic Violence Courts* (NIJ, 2009); B. Tsai, "The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation" (2000) 68 *Fordham Law Review* 1285-1327; A. Maytal, "Specialized Domestic Violence Courts: Are they worth the trouble in Massachusetts?" (2008) 18 *Public Interest Journal* 197-235.

10. The work of international organizations has also been considered:

- (a) UN Women;²²
- (b) UN Office on Drugs and Crime [UNODC];²³
- (c) World Health Organization [WHO];²⁴
- (d) Council of Europe;²⁵

²² Vide UN Women, *Report of Expert Group Meeting - Good Practices National Action Plans on Violence against Women* (2010); UN Women, *Thematic Evaluation - The Contribution of UN Women to Prevent Violence against Women and Expand Access to Services* (2013) Vol. 1-3; UN Women, *Ending Violence against Women and Girls: Programming Essentials* (2013); UN Women, *Working with the Security Sector to End Violence against Women and Girls* (2011).

²³ Vide UNODC, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women* (2014); UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls* (2014); UNODC, R. Montgomery et al, *Police Response to Violence against Women and Girls: Background Paper* (UN Women, UNFPA, UNDP & UNODC - Global Technical Consultation on essential policing and justice sector services to respond to violence against women and girls, 2014).

Vide also UNODC, *Preventing and Responding to Domestic Violence – Trainer’s Manual for Law Enforcement and Justice Sectors in Vietnam* (2011); UNODC, *Training Curriculum on Effective Police Responses to Violence against Women* (2010); UNODC, *Strategies for Confronting Domestic Violence* (1993).

²⁴ Vide C. Garcia-Moreno et al, *Multi-Country Study on Women’s Health and Domestic Violence against Women Initial Results on Prevalence, Health Outcomes and Women’s Responses* (WHO, 2005); WHO, *Promoting Gender Equality to Prevent Violence against Women* (2009); WHO, *Intimate Partner Violence* (2012).

²⁵ Vide CoE, *Final Activity Report Task Force to Combat Violence against Women, including Domestic Violence* [EG-TFV (2008)6]; L. Kelly & L. Dubois, *Combating Violence against Women: Minimum Standards for Support Services* [EG-VAW-CONF (2007) Study rev.]; E. Ruuskanen & K. Aromaa, *Administrative Data Collection on Domestic Violence in Council of Europe Member States* [EG-VAW-DC(2008)Study]; CoE Gender Equality and Violence against Women Division, Directorate General of Human Rights and Rule of Law, *Overview of Studies on the Costs of Violence against Women and Domestic Violence* (2012); CoE Equality Division, Directorate General of Human Rights, *Measures dealing with men perpetrators of domestic violence* [EG-SEM-MV (2003) Proceedings]; CoE Equality Division, Directorate General of Human Rights, *Therapeutic treatment of men perpetrators of violence within the family* [EG-SEM-MV (2004) Proceedings]; CoE Equality Division, Directorate General of Human Rights, *Violence within the Family: the Place and Role of Men* [EG-SEM-MV (2005) Proceedings]; OAS & CoE, *Regional Tools to Fight Violence against Women: The Belém do Pará and Istanbul Conventions* (2014).

Vide also C. Hagemann-White et al., *Combating Violence against Women - Stocktaking Study on the Measures and Actions taken in Council of Europe Member States* [CDEG (2006) 3]; C. Hagemann-White & S. Bohn, *Protecting Women against Violence - Analytical Study on the Effective Implementation of Recommendation Rec(2002)5 on the Protection of Women against Violence in Council of Europe Member States* [CDEG (2007) 3]; C. Hagemann-White, *Protecting Women against Violence - Analytical Study of the Results of the Second Round of Monitoring the Implementation of Recommendation Rec (2002) 5 on the Protection of Women against Violence in Council of Europe Member States* [CDEG (2008) 2 rev]; C. Hagemann-White, *Protecting Women against Violence - Analytical Study of the Results of the Third Round of Monitoring the Implementation of Recommendation Rec (2002) 5 on the*

- (e) European Union;²⁶
- (f) Organization for Security and Co-operation in Europe [OSCE];²⁷ and
- (g) The European Institute for Gender Equality [EIGE].²⁸

Protection of Women against Violence in Council of Europe Member States [CDEG (2010) 12]; C. Hagemann-White, *Protecting Women against Violence - Analytical Study of the Results of the Fourth Round of Monitoring the Implementation of Recommendation Rec (2002) 5 on the Protection of Women against Violence in Council of Europe Member States* [2014].

²⁶ Vide FRA [European Union Agency for Fundamental Rights], *Violence against Women: An EU-wide Survey - Main Results* (2014).

²⁷ Vide OSCE Gender Section, *Bringing Security Home: Combating Violence Against Women in the OSCE Region - A Compilation of Good Practices* (2009).

²⁸ Vide EIGE, *Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women – Victim Support* (2012); EIGE, *Study on international activities in the field of data collection on gender-based violence across the EU* (2013).

(III) Overview of the Current Framework and Its Lacunas and Weaknesses

11. The object of the Protection from Domestic Violence Act [PDVA], as enacted in 1997, was to reduce and prevent domestic violence and to ensure that, where such violence occurs, there is legal protection through the issue by the Court of protection, occupancy or tenancy orders.

An Enforcement Officer may, with the consent of an aggrieved spouse, file on his behalf an application for an interim or permanent protection, occupation or tenancy order and shall to that effect swear an affidavit reciting the facts on which he relies to make the application on behalf of the aggrieved spouse.²⁹

Breach of an interim or permanent, protection order, occupation order, tenancy order or an ancillary order constitutes an arrestable offence.

12. The Act was amended in 2004 so as to broaden the scope of application of the Protection from Domestic Violence Act and in particular to -

²⁹ Section 11(4) of the Act.

Enforcement Officer is defined, in section 2 of the Act, as an officer of the Ministry responsible for the subject family welfare, authorized by the Minister to act as such or a police officer.

The Family Welfare and Protection Unit of the Ministry operates through a network of six Family Support Bureaux (FSBx) around the island. The following services are available at the FSBx: Family Counselling; Psychological Counselling; Legal Counselling; Assistance to adult victims of gender-based violence.

The Mauritius Police Force has set up, as far back as September 1994, the Police Family Protection Unit (PFPU), which has the responsibility *inter alia* to deal with cases of gender based violence/domestic violence, child abuse, elderly abuse and family conflicts. The Unit provides assistance and support to victims, counselling, referral to other agencies, placement in Shelters, handles application of Protection, Occupation and Tenancy Orders, as well as prevention and training.

- (a) cover cases of domestic violence committed by persons living under the same roof;
- (b) increase the time limit before an application under section 3, 4 or 5 of the Act is heard;
- (c) increase the penalty applicable to offences under the Act;
- (d) provide for counselling (if the parties so consent);³⁰
- (e) empower the Court to direct a probation officer to report on compliance of any order made under the Act at such intervals as it thinks fit.

13. According to section 2 of the Protection from Domestic Violence Act [PDVA], as amended by Act No. 11 of 2004, “domestic violence” includes any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof –

- (a) wilfully causing or attempting to cause physical injury;
- (b) wilfully or knowingly placing or attempting to place the spouse or the other person in fear of physical injury to himself or to one of his children;
- (c) intimidation, harassment, ill-treatment, brutality or cruelty;
- (d) compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain;
- (e) confining or detaining the spouse or the other person against his will;
- (f) harming a child of the spouse;
- (g) causing or attempting to cause damage to the spouse’s or the other person’s property;

³⁰ Counselling sessions are provided by the Family Welfare and Protection Unit of the Ministry of Gender Equality, Child Development and Family Welfare, through its network of Family Support Bureaux.

- (h) threatening to commit any act mentioned in paragraphs (a) to (g).

14. Prior to the 2004 amendment, "domestic violence" was defined as including any of the following acts committed by a person against his spouse or a child of such spouse -

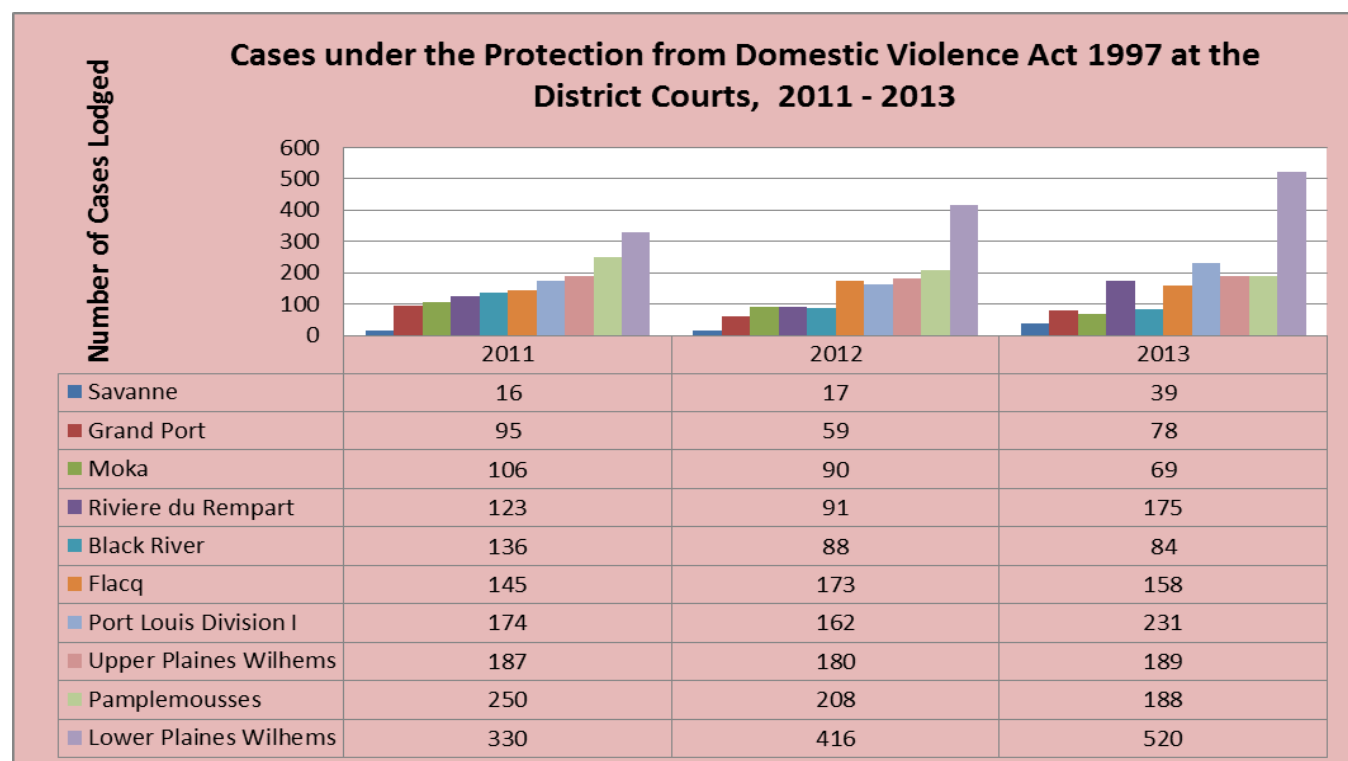
- (a) wilfully causing or attempting to cause physical injury;
- (b) wilfully or knowingly placing or attempting to place the spouse in fear of physical injury to himself or to one of his children;
- (c) intimidation, harassment, maltreatment, brutality or cruelty;
- (d) compelling the spouse by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse has a right to abstain;
- (e) confining or detaining the spouse against his will;
- (f) any harm or threat to cause harm to a child of the spouse;
- (g) causing or attempting to cause damage to the spouse's property;
- (h) a threat to commit any act mentioned in paragraphs (a) to (g).

15. In 2007, the Act was further amended to –

- (a) provide that the Court may hear an application for a protection order in such manner as it thinks fit;
- (b) provide that the Court, which has made a protection, occupancy or tenancy order, may make an ancillary order as to alimony;
- (c) increase the penalty for the offence of wilfully failing to comply with any order made under the Act;
- (d) provide that the Court may order a spouse who has wilfully failed to comply with an order made under the Act, to attend counselling sessions instead of sentencing him to a fine or imprisonment.

16. In 2011, the Act was again amended in order to give to the Chief Justice the power to make rules for the purposes of the Protection from Domestic Violence Act, including rules for the hearing of applications for occupation and tenancy orders, and to provide for related matters.

17. Domestic violence is a serious problem for the household as well as society. Data over the past three years show that the number of reported cases of domestic violence is in the rise. The fight against domestic violence must be made a national priority.



18. Statistics indicate that the victims are predominantly women;³¹ domestic violence affects mainly spouses/partners.³² The Gender Links Survey of 2012 finds that at least one in four women has experienced gender-based violence at some time in their life and that 23% of gender-based violence in Mauritius occurs within intimate partners.³³

Breakdown by sex of Protection Orders under the Protection from Domestic Violence Act									
	Spouse/partner			Other persons living under the same roof			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Applications received	63	1,437	1,500	77	198	275	140	1,635	1,775
Interim Orders issued	50	1,299	1,349	67	180	247	117	1,479	1,596
Orders issued	23	816	839	46	92	138	69	908	977
Orders extension made	12	358	370	-	-	-	12	358	370
Applications withdrawn/set aside/struck out/dismissed	33	627	660	45	97	142	78	724	802
Cases where parties have been ordered to attend counselling sessions	-	18	18	1	-	1	1	18	19

³¹ The 2013 Annual Report of the Judiciary indicates that, in the year 2013, out of 1500 applications received from spouse/partner, 63 were men. Out of 275 applications received from other persons living under the same roof, 77 were males.

³² The 2013 Annual Report of the Judiciary indicates that in 2012, 1,341 applications were received from spouse/partner and 181 applications from other persons living under the same roof. In 2013, 1,500 applications were received from spouse/partner and 275 applications from other persons living under the same roof.

³³ Gender Links, *Gender Based Violence Indicators Study - Mauritius Country Report* (2012).

19. As the statistics show, few persons opt to attend counselling sessions.

	Breakdown of Orders under the Protection from Domestic Violence Act 1997 at the District Courts, 2012-2013											
	Orders									Total		
	Protection		Percentage Change for protection order	Occupation		Tenancy		Revocation				
	2012	2013		2012	2013	2012	2013	2012	2013	2012	2013	Percentage Change
Applications received	1,522	1,775	16.6% increase	20	25	2	8	1	1	1,545	1,809	17.1% increase
Interim Orders issued	1,465	1,596	8.9% increase	2	6		1			1,467	1,603	9.3% increase
Orders issued	813	977	20.2% increase	8	7	1	1	1		823	985	19.7% increase
Orders extension made	211	370	73.4% increase	5						216	370	71.3% increase
Applications withdrawn/set aside/struck out/dismissed	650	802	23.4% increase	7	11	1	2			658	815	23.9% increase
Cases where parties have been ordered to attend counselling sessions	26	19	26.9% decrease							26	19	26.9% decrease

20. Section 231 of the Criminal Code was amended in 1998 to make it an aggravating circumstance (calling for a harsher sentence), in cases provided for by sections 228 and 229,³⁴ where the offender has committed the assault upon his spouse or any person with whom he lives or has lived maritally or any minor child of such person.³⁵
21. The Committee has taken note that, although assault upon spouse is a serious criminal offence, the provisions of our Criminal code are not adequately enforced. There is still that perception that this is rather a civil matter and that the victim should seek a protection order.³⁶
22. There may also be the understanding, premised on the view that the spouse is competent but not compellable as a witness [*Ah Yune v. R* (1990) MR 291], that given the spouse victim may not be willing at a later stage to go ahead with the prosecution, such cases should not be handled with the same rigour as other criminal cases (but rather be dealt with as family disputes).

³⁴ Section 228 provides, *inter alia*, as an aggravating circumstance, which calls for a harsher penalty, an assault where (a) the act of violence has caused any sickness or incapacity for personal labour for more than 20 days, (b) the person injured or assaulted has had an arm, a leg or a thigh broken, or has lost the use of both eyes or of one eye only, (c) where the wound or blow inflicted wilfully, but without intention to kill, shall nevertheless cause death, (d) where the unintentional death has preceded, accompanied or followed another crime.

Section 229 provides for a harsher penalty when there is assault with premeditation or lying in wait, whether death has or has not ensued.

³⁵ Amended by Act 13 of 1998.

³⁶ As pointed out in the 2001 Report of the Task Force, chaired by Mrs. P. Patten, Bar-at-Law, and set up by Government to review, *inter alia*, laws which are discriminatory towards women and the procedures for the enforcement of the Protection from Domestic Violence Act, at p. 39:

“Assault upon spouse is first and foremost a criminal offence and the police should take appropriate action against the offender. Nothing should prevent a spouse victim of violence to seek a protection order under the Protection from Domestic Violence Act over and above the criminal case and vice versa.”

There are provisions in the Courts Act, which clarify the law as to the instances where a spouse would be competent as a witness for the prosecution. According to section 187(1) of the Act, the wife or husband of a person charged with an offence against the person, property, or conjugal rights of such husband or wife or against the person or property of any child of either party to the marriage, may be called either for the prosecution or defence and without the consent of the person charged. Section 187(2) of the Courts Act is to the effect that the provisions of the Act, regarding evidence in criminal cases, do not affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.³⁷

Section 164 of the Courts Act expressly lays down that the husband or wife of the person charged shall be a competent and compellable witness, in cases where the offence is charged to have been committed against the person or property or conjugal rights of the husband or wife of the accused.³⁸ Our law is different from what obtains at common law.³⁹

³⁷ The rule at common law, which grew up partly as a result of the legal fiction of the unity of husband and wife, and partly because of the policy of the law in preserving and upholding the integrity of the matrimonial relationship, is that the spouse of the accused is generally incompetent as a witness for the prosecution. Even at common law some exceptions to the rule were recognized. The extent of the exceptions was, however, never finally decided. Common-law commentators generally agreed that the spouse was competent on a charge of high treason, in which case public policy requiring conviction in the interests of the State overrode that requiring the preservation of the matrimonial relationship: *vide* P. Murphy, *A Practical Approach to Evidence* (London: Blackstone, 2nd ed.) at p. 342. It was also established that the spouse was a competent witness for the prosecution as to offences of violence committed against the spouse, because in such cases the spouse against whom the offence is committed is often the only available witness and without his or her testimony, the offence might go unpunished [*Lord Audley's case* (1632)]. But there was no real agreement on the question of what offences were to be regarded as offences of violence against the spouse for this purpose: *vide* *R v. Yeo* (1951) 1 All ER 846; *R v. Verolla* (1963).

There was also some suggestion that the spouse might be competent in the case of offences against minor members of the family, for the same reasons of policy, but this was never settled at common law [*vide* P. Murphy, *A Practical Approach to Evidence* (London: Blackstone, 2nd ed.) at pp. 342-343].

³⁸ Quite astonishingly, in *Ah Yune v. R* (1990) MR 291 [SCJ 24], the Supreme Court held that when a spouse is competent, he or she is not a compellable witness. The view was expressed that section 164 of the Courts Act must be

23. After reviewing the current framework, the Advisory Committee has been of the view that it presents numerous lacunas and weaknesses:

- (1) The definition given to domestic violence is too narrow; it does not include economic violence that occur within the family or domestic unit or between former or current spouses or partners; it is restricted to persons living under the same roof and does not apply to persons who may have shared the same residence with the victim, or to persons who – even though not living under the same roof - are or were involved in an intimate or sexual relationship of any duration;
- (2) Not all acts of domestic violence are criminalized: our law does not capture psychological harm as an offence; our law insufficiently provides for aggravating circumstances;
- (3) The criminal justice response is not very effective: specialized expertise for the handling of such cases may be lacking, there is no specialized court to deal with such cases, and there may be insufficient co-ordination among the agencies;

regarded as having been impliedly repealed. Section 164 of the Courts Act, entitled 'Saving as to accused person and spouse', as reproduced in the Revised Laws of 1945 and 1981, reads as follows: Nothing in this Part [Part V of Courts Act] dealing with 'Evidence' shall render any person charged with having committed an offence punishable by law, or the husband or wife of that person, a competent witness at the trial of that person for such offence before any court of criminal jurisdiction, except in cases where the offence is charged to have been committed against the person or property or conjugal rights of the husband or wife of the accused, in which cases such husband or wife shall be a competent and compellable witness.

³⁹ In *Hoskyn v. Metropolitan Police Commissioner* (1978) 1 All ER 136, a majority of the House of Lords held that where an accused is charged with an offence of violence against his or her spouse, that spouse is competent but not compellable for the prosecution. Lord Salmon pointed out that the competence of the wife, in the case of an offence of violence committed against her, was allowed by the common law for the wife's protection, and should not be forced upon her where she was reluctant, on mature reflection, to testify against him because of forgiveness and reconciliation, and had no fear of further violence.

- (4) The protection given to victims is somewhat deficient; risk of re-victimization is rather high;⁴⁰ the support and assistance afforded to victims may not sufficiently meet their needs (few persons opt to attend counselling sessions);
- (5) Legislation does not sufficiently mandate funding for development of preventive mechanisms;
- (6) Redress and reparation for victims is lacking; and
- (7) The monitoring and evaluation system is not strong enough to deliver the appropriate response to this societal problem.

⁴⁰ From 2002 to 4 December 2007, out of a total number of 4,983 cases of domestic violence that had been reported to the Police, 1,654 spouses were assaulted whilst they were under a Protection Order, out of whom three passed away [vide PQ B/1237, 4 December 2007].

(IV) Measures for Strengthening the Framework

24. The State has the obligation, under the due diligence principle, to establish holistic, systemic processes to prevent, protect, prosecute, punish and provide redress and reparations for domestic violence and other forms of gender-based violence.⁴¹

Legislation should be comprehensive and multidisciplinary, criminalizing all forms of violence, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological), as well as adequate punishment of perpetrators and availability of remedies for survivors.

⁴¹ Vide Z.A. Aziz & J. Moussa, *Due Diligence Framework - State Accountability Framework for Eliminating Violence against Women* [International Human Rights Initiative Inc., Due Diligence Project, 2014].

(a) **Strengthening the Framework by Adopting a More Comprehensive Definition of Domestic Violence**

25. The Protection from Domestic Violence Act should provide a more comprehensive definition of domestic violence, so as to include all acts of physical, sexual, psychological or economic violence that occur within the family or between former or current spouses or partners,⁴² whether or not the perpetrator shares or has shared the same residence with the victim.⁴³

26. Our Legislature can seek inspiration from legislation in other jurisdictions.

The New Zealand Domestic Violence Act 1995 provides as follows:

3 Meaning of domestic violence

- (1) In this Act, **domestic violence**, in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship.
- (2) In this section, **violence** means—
 - (a) physical abuse:
 - (b) sexual abuse:
 - (c) psychological abuse, including, but not limited to,—
 - (i) intimidation:
 - (ii) harassment:
 - (iii) damage to property:

⁴² Partners are persons who, though not civilly married, are living or have lived together as husband and wife, or are the parents of a common child.

⁴³ Article 3(b) of the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011) [known as the Istanbul Convention] defines “domestic violence” as meaning 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.

- (iv) threats of physical abuse, sexual abuse, or psychological abuse:
- (iva) financial or economic abuse (for example, denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education):
- (v) in relation to a child, abuse of the kind set out in subsection (3).
- (3) Without limiting subsection (2)(c), a person psychologically abuses a child if that person—
 - (a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or
 - (b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;—but the person who suffers that abuse is not regarded, for the purposes of this subsection, as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.
- (4) Without limiting subsection (2),—
 - (a) a single act may amount to abuse for the purposes of that subsection:
 - (b) a number of acts that form part of a pattern of behavior may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.
- (5) Behaviour may be psychological abuse for the purposes of subsection (2)(c) which does not involve actual or threatened physical or sexual abuse.

4 Meaning of domestic relationship

- (1) For the purposes of this Act, a person is in a **domestic relationship** with another person if the person—
 - (a) is a spouse or partner of the other person; or
 - (b) is a family member of the other person; or
 - (c) ordinarily shares a household with the other person; or
 - (d) has a close personal relationship with the other person.
- (2) For the purposes of subsection (1)(c), a person is not regarded as sharing a household with another person by reason only of the fact that—
 - (a) the person has—
 - (i) a landlord-tenant relationship; or
 - (ii) an employer-employee relationship; or
 - (iii) an employee-employee relationship—with that other person; and
 - (b) they occupy a common dwelling house (whether or not other people also occupy that dwelling house).
- (3) For the purposes of subsection (1)(d), a person is not regarded as having a close personal relationship with another person by reason only of the fact that the person has—
 - (a) an employer-employee relationship; or
 - (b) an employee-employee relationship—

- with that other person.
- (4) Without limiting the matters to which a court may have regard in determining, for the purposes of subsection (1)(d), whether a person has a close personal relationship with another person, the court must have regard to—
- (a) the nature and intensity of the relationship, and in particular—
 - (i) the amount of time the persons spend together;
 - (ii) the place or places where that time is ordinarily spent;
 - (iii) the manner in which that time is ordinarily spent;—but it is not necessary for there to be a sexual relationship between the persons:
 - (b) the duration of the relationship.

Section 1 of the South African Domestic Violence Act 1998 provides that "domestic violence" means—

- a) physical abuse;⁴⁴
- b) sexual abuse;⁴⁵
- c) emotional, verbal and psychological abuse;⁴⁶
- d) economic abuse;⁴⁷
- e) intimidation;⁴⁸
- f) harassment;⁴⁹

⁴⁴ "Physical abuse" means any act or threatened act of physical violence towards a complainant.

⁴⁵ "Sexual abuse" means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant.

⁴⁶ "Emotional, verbal and psychological abuse" means a pattern of degrading or humiliating conduct towards a complainant, including—

- a) repeated insults, ridicule or name calling;
- b) repeated threats to cause emotional pain; or
- c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security.

⁴⁷ "Economic abuse" includes—

- a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence; or
- b) the unreasonable disposal of household effects or other property in which the complainant has an interest.

⁴⁸ "Intimidation" means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear.

⁴⁹ "Harassment" means engaging in a pattern of conduct that induces the fear of harm to a complainant including—

g) stalking;⁵⁰

h) damage to property;⁵¹

i) entry into the complainant's residence without consent, where the parties do not share the same residence;⁵² or

j) any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.⁵³

a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;

b) repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;

c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant.

⁵⁰ "Stalking" means repeatedly following, pursuing, or accosting the complainant.

⁵¹ "Damage to property" means the willful damaging or destruction of property belonging to a complainant or in which the complainant has a vested interest.

⁵² "Residence" includes institutions for children, the elderly and the disabled.

⁵³ "Complainant" means any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant.

"Domestic relationship" means a relationship between a complainant and a respondent in any of the following ways:

a) they are or were married to each other, including marriage according to any law, custom or religion;

b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;

c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);

d) they are family members related by consanguinity, affinity or adoption;

e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or

f) they share or recently shared the same residence.

"Respondent" means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant.

(b) Strengthening the Framework by Further Criminalizing Forms of Domestic violence

27. All forms of domestic violence should be criminalized, including the intentional conduct of seriously impairing the psychological integrity of a spouse or partner through coercion or threats.⁵⁴

28. Other circumstances can be provided in the Criminal Code as aggravating circumstances so as to provide for a harsher penalty. Circumstances, such as the relationship of the perpetrator and survivor (a former or current spouse or partner, a member of the family, a person cohabiting with the victim); the offence was committed *inter alia* against a person with special needs, a pregnant woman, or a person who, due to whatever reason, is incapable of resisting; a weapon was used; the act was committed in the presence of a minor; or in repeated incidents of domestic violence, regardless of the level of injury.⁵⁵

29. Express provision should be made in our law that rape includes marital rape.⁵⁶

⁵⁴ Our policy makers can seek inspiration from Article 222-33-2-1 of the French Penal code which establishes “un délit de violences psychologiques”:

“Le fait de harceler son conjoint, son partenaire lié par un pacte civil de solidarité ou son concubin par des propos ou comportements répétés ayant pour objet ou pour effet une dégradation de ses conditions de vie se traduisant par une altération de sa santé physique ou mentale est puni de trois ans d'emprisonnement et de 45 000 € d'amende lorsque ces faits ont causé une incapacité totale de travail inférieure ou égale à huit jours ou n'ont entraîné aucune incapacité de travail et de cinq ans d'emprisonnement et de 75 000 € d'amende lorsqu'ils ont causé une incapacité totale de travail supérieure à huit jours.

Les mêmes peines sont encourues lorsque cette infraction est commise par un ancien conjoint ou un ancien concubin de la victime, ou un ancien partenaire lié à cette dernière par un pacte civil de solidarité. »

⁵⁵ Article 222-14 of the French Penal Code makes it an aggravating circumstance the « violences habituelles commises par le conjoint ou le concubin de la victime ou par le partenaire lié à celle-ci par un pacte civil de solidarité ».

⁵⁶ The French Loi No. 2006-399 du 4 avril 2006 renforçant la prévention et la répression des violences au sein du couple ou commises contre les mineurs has inserted in Article 222-22 Penal Code that « Le viol et les autres agressions sexuelles sont constitués lorsqu'ils ont été imposés à la victime dans les circonstances prévues par la présente section, quelle que soit la nature des relations existant entre l'agresseur et sa victime, y compris s'ils sont

30. Section 242 of the Criminal Code, which provides that manslaughter committed by any person on his spouse, as well as on his accomplice, at the very moment he finds them in the act of adultery is excusable, should be repealed. Such a provision legitimates acts of domestic violence and sends a very bad signal. Our provision was based on Article 324 of the 1810 French Penal Code, which has since been repealed.

31. Our Criminal Code provides for aggravating circumstances in cases of voluntary homicide (manslaughter committed with premeditation or by lying in wait; manslaughter preceding, accompanying or following another crime; murder of a newly born child).⁵⁷ In such cases, the guilty person may be liable to be sentenced to penal servitude for life or, where the Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence and has entered those circumstances on the record of the proceedings, for a term not exceeding 60 years.

Provision should be made in our Criminal Code that manslaughter committed by the spouse or partner of the victim is an aggravating circumstance.⁵⁸

unis par les liens du mariage. Dans ce cas, la présomption de consentement des époux à l'acte sexuel ne vaut que jusqu'à preuve du contraire. »

⁵⁷ Vide sections 216 to 218, 220, 222 and 223 of the Criminal Code.

⁵⁸ In France, Article 221-4 of the Penal Code provides *inter alia* that “Le meurtre est puni de la réclusion criminelle à perpétuité lorsqu'il est commis par le conjoint ou le concubin de la victime ou le partenaire lié à la victime par un pacte civil de solidarité ».

(c) Improving the Criminal Justice Response to Domestic Violence

32. The criminal justice system has an important role in addressing domestic violence, ensuring it is treated as seriously as other violent crime. The system can help protect victims and their families, deter further acts of violence by holding perpetrators accountable for their actions and convey the message to society that domestic violence will not be tolerated and that the abuse is not the fault of the victim. Victims require access to the courts, guidance and support, and often protection, as they proceed through the criminal justice process. Traditionally, the criminal justice system has focused mainly on the most serious cases of domestic violence, such as homicide or involving serious injury requiring hospitalization, or when the violence has occurred frequently in the past.

33. An effective crime prevention and criminal justice response needs to be put in place which is human rights-based and victim-centered,⁵⁹ and which ensure offender accountability.⁶⁰

⁵⁹ *Vide* UNODC, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women* (2014) at pp. 34-35: The Criminal justice system should be designed with a view to protecting, assisting and empowering victims, prioritizing issues of physical and psychological safety. The focus should be on assisting victims in their engagement with the criminal justice process rather than holding them responsible for their often well-justified “reluctance” to cooperate with the criminal justice system. Any action should counter the climate of tolerance, social passivity and victim-blaming and acknowledge how these crimes, given their unique characteristics, have a traumatic and disempowering impact on victims. A victim-centered approach means ensuring that the criminal justice institutions and professionals at each stage of the justice process do not cause secondary victimization. It is crucial to develop multidisciplinary and coordinated approaches to address the victims’ complex set of needs, including safety, legal, psychological and health requirements.

⁶⁰ *Ibid.* at p. 35: A coordinated criminal justice response requires effective action to hold the perpetrators accountable while ensuring a fair trial. Ensuring offender accountability should inform actions that encourage reporting and maximize the victim’s cooperation with the criminal justice process. It may also mean taking actions independently of the victim depending on the circumstances. This principle should guide the design of interventions at the investigative stage, prosecution stage, trial stage as well as corrections, which focus on rehabilitation of offenders, where appropriate.

34. Over the last two decades, the United Nations and regional organizations have recognized that using specialized expertise at various stages of the criminal justice system to respond to domestic violence and other forms of violence against women is a good practice.⁶¹ Legislation should provide for the establishment of specialized units in relevant criminal justice agencies: a specialized police unit,⁶² a specialized prosecutor unit (within the Office of the Director of Public Prosecutions),⁶³ for the fight against domestic violence and other forms of gender-based violence. Provision must be made for adequate funding for their work and specialised training of their staff.⁶⁴ Provision must also be made that

⁶¹ *Vide* UNODC, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women* (2014); UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls* (2014); OSCE Gender Section, *Bringing Security Home: Combating Violence Against Women in the OSCE Region - A Compilation of Good Practices* (2009).

⁶² The Family Protection Unit (PFPU) of the Mauritius Police Force has responsibility *inter alia* to deal with cases of gender based violence/domestic violence, child abuse, elderly abuse and family conflicts. The Unit provides assistance and support to victims, counselling, referral to other agencies, placement in Shelters, handles application of Protection, Occupation and Tenancy Orders, as well as prevention and training. In order to provide a better service and to be closer to the victims, the PFPU is decentralized on a regional basis. The Unit, however, is not categorized as a specialized unit. This unit needs to be further strengthened.

⁶³ The DPP, Mr. Boolell, SC, in an article in *l'Express*, 7 March 2014, about "Putting an end to domestic violence", had this to say about the work of his Office:

"Domestic violence remains a priority for my office ... At the level of the Office of the Director of Public Prosecutions (ODPP) I have issued clear guidance for a coordinated approach in so far as possible with all agencies concerned, the Family Protection Unit of the Police, the Probation Office and the CDU. We are confronted with two important challenges. Too many victims abandon their cases. They either fail to turn up in court or refuse to give evidence or simply withdraw the complaint. They fear Victimization ...

The Victims and Witness Support Unit of the ODPP is publishing an informative booklet on the legal avenues available to victims of domestic violence. The first ODPP podcast also addresses the problems of domestic violence."

Specialized prosecution units or dedicated prosecutors have become the trend in many States: *vide* UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls* (2014) at pp. 145 seq. The main purpose of a specialized prosecution unit is to improve general efficiency in the prosecution of such cases and improve the experience of the victim. The unit will fast track cases, thereby shortening any delays, and improve coordination with other criminal justice officials.

⁶⁴ *Vide* Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice", Provision 20 (a)–(d):

20. Member States, in cooperation with relevant non-government organizations and professional associations, are urged, as appropriate:

complainants should have the option of communicating with female police officers or prosecutors.⁶⁵

35. Legislation should provide for the creation of a specialized domestic court guaranteeing timely and efficient handling of cases of violence.⁶⁶ Provision must also be made for officers assigned to the specialized court to receive specialized training and that measures are in place to minimize stress and fatigue of such officers.

36. There is also the need for a coordinated and integrated criminal justice response. An integrated and coordinated plan of action involving all the criminal justice agencies working together is essential to ensure the effective implementation of the laws. Provision must be made for coordination between relevant criminal justice and victim

(a) To provide for or to encourage mandatory cross-cultural gender and child-sensitivity training modules for police, criminal justice officials and professionals involved in the criminal justice system on the unacceptability of all forms of violence against women and on their harmful impact and consequences on all those who experience such violence;

(b) To ensure that police, criminal justice officials and other professionals involved in the criminal justice system receive adequate training and continued education on all relevant national laws, policies and programmes, as well as international legal instruments;

(c) To ensure that police, criminal justice officials and other relevant authorities are adequately trained to identify and respond appropriately to the specific needs of women victims of violence, including victims of trafficking; to receive and treat all victims respectfully with a view to avoiding secondary victimization; to handle complaints confidentially; to conduct safety assessments and risk management; and to use and enforce protection orders; and

(d) To encourage relevant professional associations to develop enforceable standards of practice and behaviour and codes of conduct that promote justice and gender equality.

⁶⁵ The UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice [A/RES/65/228, 21 December 2010] urges States *inter alia* to provide victims of violence, where possible, with the right to speak to a female officer, whether it is the police or any other criminal justice official.

⁶⁶ Consideration may be given to the establishment of a Family Court, which would have *inter alia* exclusive original jurisdiction in matters relating to Protection from Domestic Violence Act and in respect of domestic violence offences. *Vide* Law Reform Commission, Issue Paper on “Establishment of a Family Court and the Conduct of Family Proceedings” [November 2011]; also P. Patten, *Reforming the Family Justice System in Mauritius* (2005).

support agencies and services. The principle of promoting a multi-agency cooperative approach that coordinates a wide range of actors reflects the complexity and multifaceted nature of violence against women. Coordination seeks to minimize the silo effect of criminal justice agencies' mandates and ensure that decisions made throughout the criminal justice process take into account the differing interest of the agencies involved.⁶⁷

Provision should be made for the establishment of a Domestic Homicide Review Committee, which would review the circumstances in which the death of a person has, or appears to have, resulted from violence, abuse or neglect by a person to whom he was related or with whom he was or had been in an intimate personal relationship, or a member of the same household as himself, with a view to identifying the lessons to be learnt from the death.

37. As front-line receivers of cases, the police have an immediate and determinant impact on victims. The actions by the police can determine whether the victims will be adequately protected or exposed to higher risk. The police actions are the first steps to ensuring access to justice for the victims.

⁶⁷ Vide UNODC, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women* (2014) at pp. 35, 92-95.

When domestic violence is dealt with through the criminal justice system, the policies adopted for law enforcement should reflect the unique nature of domestic crime, providing support for the victim and for her dependants. A number of requirements have to be met for law enforcement policies to be effective, such as the development of victim-oriented crisis-intervention techniques and practices to improve the level of service offered to victims (these would include a family consultation service providing 24-hour crisis intervention, emergency shelters for women and children, and advisory clinics to provide emotional counselling for women); the effective investigation of crimes arising out of incidents of domestic violence; and the provision of treatment for men who abuse and assault (in addition to criminal prosecution). These requirements depend on a multi-agency approach, as domestic violence is a complex problem requiring the efforts of people from different professional backgrounds, and from the community in general.

Police officers should:

- (a) Respond promptly to every request for assistance and protection in cases of domestic violence, even when the person who reports such violence is not the complainant/survivor;
- (b) Upon receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the complainant, including by:
 - interviewing the parties and witnesses, including children, in separate rooms to ensure there is an opportunity to speak freely;
 - recording the complaint in detail;
 - advising the complainant of his/her rights;
 - securing evidence of any kind that may be relevant;⁶⁸
 - filing an official report on the complaint;
 - providing or arranging transport for the complainant to the nearest hospital or medical facility for treatment, if it is required or requested;

⁶⁸ In addition to taking statements from the victim, witnesses and possibly from the suspect, the first responders should examine and preserve evidence of any kind that may be relevant, such as

- Signs of injury (cuts, scrapes, bruises, fractures, choking, pulled out hair) which may be able to be photographed, or attested to by an examining physician);
- Torn clothing;
- Broken fingernails;
- Broken household items, indicating a violent incident;
- Observations of neighbours, friends, family.

The DPP, Mr. Boolell, SC, in an article in l'Express, 7 March 2014, about "Putting an end to domestic violence", had this to say about the role of investigators:

"In any investigation for a case of domestic violence, the first hour is critical. The police investigator must therefore be equipped with a photo camera (or video camera) to gather as much evidence as possible at an early stage. The officer should take a photograph of the victim, how did he or she look? Was the victim injured? What was his or her demeanour? Was he or she disheveled? If he arrives on the scene of the crime, was the furniture overturned or broken? How about the neighbours, did they hear anything? Photos and videos can constitute invaluable evidence and can assist the prosecution to rely less and less on reluctant victims."

- providing or arranging transport for the complainant and the complainant's children or dependents, if it is required or requested; and
- providing protection to the reporter of the violence.

Provision must be made in our law that a police officer, of a certain rank, may arrest without a warrant upon reasonable grounds of suspicion, a person who has committed an offence of domestic violence; or is about to commit an offence of domestic violence and there is no other way to equally effectively prevent the commission of the offence.

38. Responsibility for prosecuting acts of domestic violence and other forms of gender-based violence should lie with the Director of Public Prosecutions. Provision must be made for offences relating to domestic violence to be instituted with consent of Director of Public Prosecutions. Provision may also be made in our law for deferred prosecution agreements, whereby the Director of Public Prosecutions can enter into an agreement with an alleged perpetrator not to prosecute for a domestic violence offence, subject to the alleged perpetrator taking the commitment to attend a rehabilitation program and not to indulge in further acts of domestic violence; should the perpetrator fail to meet the requirements laid down in the agreement, prosecution would ensue.

39. Legislation should guarantee the rights of victims of domestic violence. The victim of domestic violence shall be guaranteed, *inter alia*, the following rights -

- (1) Right to Privacy: The confidentiality and privacy of every person in the situation of domestic violence shall be ensured, especially with regards to the investigation and any judicial proceedings, as well as with regards to medical proceedings and care;

- (2) Right to be Treated with Respect and Dignity: It shall be provided that police, law enforcement forces and courts show and treat every victim of domestic violence with compassion, respect and dignity to avoid re-victimization;
- (3) Right to be Represented and Assisted by a Law Practitioner at no Charge: Every person in a situation of domestic violence shall be guaranteed free, specialized legal assistance at all stages of the investigation and judicial proceedings;
- (4) Right to be Informed of all the Procedural Acts: The victim of domestic violence shall be informed of all the procedural acts related to the aggressor, especially those related to the entry and exit from prison;⁶⁹
- (5) Right to Cessation of Domestic Violence: Every person in the situation of domestic violence shall have the right to have protective measures adopted to prevent further violence.

40. Legislation should guarantee, throughout the legal process, the complainant's right to:

- decide whether or not to appear in court or to submit evidence by alternative means [including a sworn video-recorded statement];
- when appearing in court, give evidence in a manner that does not require the complainant to confront the defendant, including through the use of in-camera proceedings, witness protection boxes, closed circuit television, and video links;

⁶⁹ Victims of domestic violence, regardless of the level or type of injury, should, at all relevant stages of the legal process, be promptly and adequately informed, in a language they understand, of their rights; the details of relevant legal proceedings; available services, support mechanisms and protective measures; opportunities for obtaining restitution and compensation through the legal system; details of events in relation to their case, including specific places and times of hearings; release of the perpetrator from pre-trial detention or from jail; and reasons why a case was dropped.

- protection within the court structure, including separate waiting areas for complainants and defendants, separate entrances and exits, police escorts, and staggered arrival and departure times;
- request closure of the courtroom during proceedings; and
- a gag on all publicity regarding individuals involved in the case, with applicable remedies for non-compliance.

41. Legislation should provide for the possibility of prosecution in the absence of the complainant, where the complainant is not able or does not wish to give evidence.

(d) Affording Better Protection, Support and Assistance to Victims

42. Victims/Survivors of domestic violence have experienced physical, sexual, psychological or economic violence, and thus require comprehensive care, both short-term and long-term. They should be protected from perpetrators in order to avoid the recurrence of further violence and ensure that victims receive adequate and timely services.⁷⁰ Medical (including psychological) interventions and social support are essential in protecting victims of domestic violence. Having reported incidents of violence, victims/survivors may need medical and psychological treatment, shelter or alternative accommodation and in the case of child victims/survivors, special attention from child protection services and agencies dealing with child witnesses. Counselling and other support services offer victims options to stop the violence; prevent its recurrence; treat the trauma (mental and physical); and understand, address and challenge the factors responsible for the violence.⁷¹ Referrals and legal advice provide victims with information on their rights and assistance in accessing these rights.

⁷⁰ Vide Z.A. Aziz & J. Moussa, *Due Diligence Framework - State Accountability Framework for Eliminating Violence against Women* [International Human Rights Initiative Inc., Due Diligence Project, 2014], at pp. 31 seq.; OSCE Gender Section, *Bringing Security Home: Combating Violence Against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 72 seq.

⁷¹ Victims/survivors require counselling and other support services to empower them to rebuild their lives. Counselors or other service providers can play a vital role in working closely with the individual woman to provide information about risks and to help develop a plan of action should further violence occur. Providing survivors with concrete assistance to develop plans for their own personal safety and that of their children or dependents is also closely linked to reintegration programs and the transition from living in a shelter to an independent life [OSCE Gender Section, *Bringing Security Home: Combating Violence Against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 74-77].

Vide L. Kelly & L. Dubois, *Combating Violence against Women: Minimum Standards for Support Services* [EG-VAW-CONF (2007) Study rev.]

43. Legislation should provide additional funding for the availability/accessibility of comprehensive and integrated support services to assist victims/survivors of domestic violence; it should ensure that all services for women survivors of violence should also provide adequate support to the women's children. The following minimum standards of availability of support services for complainants/survivors should be provided:

- one national domestic violence phone hotline where all complainants/survivors of violence may get assistance by phone around the clock and free of cost and from where they may be referred to other service providers;
- one shelter/refuge place for every 10, 000 inhabitants, providing safe emergency accommodation, qualified counselling and assistance in finding long-term accommodation;
- one counselling centre for every 50, 000 women, which provides proactive support and crisis intervention for complainants/survivors, including legal advice and support, as well as long-term support for complainants/survivors, and specialized services for vulnerable groups of women (such as specialized services for immigrant survivors of violence).⁷²

There should be provision for immediate access to comprehensive and integrated services, including treatment for injuries, post-exposure prophylaxis and psycho-social

⁷² UN *Handbook for Legislation on Violence against Women* (2010), at section 3.6.1.

counselling (even in emergency units), for complainants of domestic violence at the expense of the State.⁷³

Provision must be made for One-stop (Integrated) Service Centres. This is one of the best-known good practices in service provision, which involves bringing together services in one location, often called the “One-stop centre”, an inter-agency unit for victim/survivors of domestic or sexual violence.⁷⁴

In order to meet the needs of domestic violence survivors, collaboration and information sharing should regularly take place across a large number of agencies, at minimum law enforcement, health care, child welfare and social services agencies. Provision must be made for a Coordinated Community Response to domestic violence. The Duluth model, an intervention strategy developed by the Domestic Abuse Intervention Project in Duluth, Minnesota, is one of the best-known and earliest examples of a coordinated community response that has been modified and replicated in many countries. A key feature of the Duluth model is that it requires all sectors involved to agree to core principles of intervention that make victim protection a paramount concern.⁷⁵

Consideration may be given to the introduction of a Domestic Violence Disclosure Scheme (DVDS), which will give members of the public a formal mechanism to make enquiries about an individual who they are in a relationship with, or who is in a

⁷³ Medical facilities require basic infrastructure to offer comprehensive and confidential care, even in emergency units: *vide* Z.A. Aziz & J. Moussa, *Due Diligence Framework - State Accountability Framework for Eliminating Violence against Women* [International Human Rights Initiative Inc., Due Diligence Project, 2014], at p. 35.

⁷⁴ United Nations (2006) Ending Violence against Women: from words to action, Study of the Secretary-General (A/61/122/Add.1 and Corr.1), at p. 116.

⁷⁵ For more information, *vide* http://www.stopvaw.org/Coordinated_Community_Response.html

relationship with someone they know, where there is a concern that the individual may be violent towards their partner.⁷⁶

44. Perpetrator programs, in the form of psychological counseling, should be further developed and implemented in close coordination with services for victims/survivors.

45. Special measures should be taken for the economic empowerment of victims/survivors of domestic violence in order to meet their needs.⁷⁷

46. Legislation should allocate a specific budget to non-governmental organizations for a specified range of activities.

⁷⁶ Such a scheme was introduced in UK. Commonly known as Clare's Law, the DVDS is named after Clare Wood who was murdered in 2009 by her boyfriend. Members of the public can make an application for a disclosure, known as the 'right to ask'. Anybody can make an enquiry, but information will only be given to someone at risk or a person in a position to safeguard the victim. The scheme is for anyone in an intimate relationship regardless of gender. Partner agencies can also request disclosure is made of an offender's past history where it is believed someone is at risk of harm. This is known as 'right to know'. If a potentially violent individual is identified as having convictions for violent offences, or information is held about their behaviour which reasonably leads the police and other agencies to believe they pose a risk of harm to their partner, a disclosure will be made. The intention is to give potential victims information about the history of their partner, so they can make an informed decision about the relationship.

⁷⁷ Women's unequal economic status plays a significant role in reinforcing gender-based violence. A woman's economic dependence on a partner creates obstacles to leaving a violent relationship. Providing women with economic and employment assistance are also important aspects of protection services that help women who have survived violence to become financially independent, to reintegrate, if they have been living in a shelter, and to live independently. For this reason, shelters and other centers that provide women with housing while dealing with violence often run jobs skills programs or offer career guidance: *vide* OSCE Gender Section, *Bringing Security Home: Combating Violence Against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 87-88.

47. Training afforded to the professionals in the Ministry of Gender Equality, Child Development and Family Welfare dealing with victims or perpetrators of acts of domestic violence should be strengthened.
48. Legislation should allow immigrants who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator (including the right to divorce and to obtain independent immigration status).
49. Legislation should impose on public authorities, NGOs, and health care providers, who in the course of their work find circumstances from which it is possible to infer there is an alleged domestic violence offence, the duty to report same to an Enforcement Authority.
50. Legislation should provide that an Enforcement Officer may, with the consent of any person who is the alleged victim of an act of domestic violence (not just an aggrieved spouse), file on his behalf an application for a protection, occupancy or tenancy order. Provision should also be made that an Enforcement Officer may make the application on behalf of a victim when the latter is bedridden or severely injured.
- Legislation should provide relevant officials with the authority to order a respondent out of the home to stay away from the survivor in a Rehabilitation Centre for Domestic Violence Abusers.
51. Legislation should provide that protection orders may contain the following measures:
- direct the respondent to seek counseling or other rehabilitative service;

- order the respondent to provide financial assistance to the complainant/survivor, including payment of medical bills, counselling fees or shelter fees, monetary compensation, and in addition, mortgage, rent, insurance;
- impose the mandatory rehabilitation of an abusive offender, who has committed an act of domestic violence under the influence of alcohol or drugs or other psychotropic substances;
- prohibit the respondent from purchasing, using or possessing a firearm or any such weapon specified by the court; and
- require that the movements of the respondent be electronically monitored.

Legislation should include the following provisions regarding child custody and visitation in protection order proceedings:

- Presumption against award of custody to the perpetrator;
- Presumption against unsupervised visitation by the perpetrator;
- Requirement that, prior to supervised visitation being granted, the perpetrator must show that he has stopped using any form of violence and that he is participating in a treatment programme for perpetrators; and
- No visitation rights are to be granted against the will of the child.

52. Legislation should protect the employment rights of survivors of violence against women, including by prohibiting employers from discriminating against them or penalizing them for the consequences of their abuse. Provision must also be made for housing facilities for victims of domestic violence, who have had to leave their house with their children; school transfer facilities must be made available to children who have had to change residence as a result of domestic violence in the family.

(e) Providing Adequate Redress/Reparation for Victims

53. The due diligence principle dictates that the State must provide redress and reparation. Redress and reparation imply any form of remedy or compensation made available to victims/survivors of domestic violence to address the harm or loss suffered by them. Reparation measures aim to eliminate or mitigate the effects of the violence committed.⁷⁸

54. The UN Special Rapporteur on VAW, Rashida Manjoo, focused on reparation in her 2010 thematic report. She discussed both procedural (the process by which claims of victims/survivors are heard and decided) and substantive remedies (the measures of redress granted to victims/survivors).⁷⁹

55. Legislation should permit complainants/survivors of domestic violence to bring civil lawsuits against perpetrators for the award of damages in respect of the personal injuries

⁷⁸ Vide Z.A. Aziz & J. Moussa, *Due Diligence Framework - State Accountability Framework for Eliminating Violence against Women* [International Human Rights Initiative Inc., Due Diligence Project, 2014], at p. 71 seq.

⁷⁹ Rashida Manjoo, (2010) Annual Thematic Report of the UN Special Rapporteur on VAW, its causes and consequences, (A/HRC/14/22).

Reparations can take various forms:

1) restitution or measures to restore victims to their original situations before the violation, including restoration of liberty, human rights, employment, identity, family life and citizenship, return to place of residence and return of property;

2) compensation for any economically assessable damage as appropriate and proportional to the gravity of the violation, including physical or mental harm, lost opportunities for employment, education and social benefits, and material and moral damages;

3) rehabilitation, including medical and psychological care as well as legal and social services;

4) measures of satisfaction including, among others, the verification of facts and full and public disclosure of the truth, ascertaining the whereabouts of the missing, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims; and

5) guarantees of non-repetition, including measures contributing to prevention, such as ensuring effective civilian control of military and security forces, protecting human rights defenders, providing human rights education and reviewing and reforming laws contributing to or allowing gross violations of international human rights law.

or damage to property or financial loss as a result of the domestic violence. The Court may take into account -

- (a) The pain and suffering of the victim and the nature and extent of the physical or mental injury suffered, including compensation for emotional distress;
- (b) The cost of medical treatment for such injuries, including dental expenses;
- (c) Any loss of earnings arising therefrom;
- (d) The amount or value of the property taken or destroyed or damaged;
- (e) The cost for legal services, including the costs of an application pursuant to this act; and
- (f) The necessary and reasonable lodging and transport expenses, including the expenses required for setting up a separate household for the victim who was compelled to separate or be separated from the offender due to the domestic violence.

56. Legislation should make provision for the creation of a Victims of Domestic Violence Support Fund, which would entitle survivors of domestic violence to apply and receive basic material support and a fair amount of compensation.⁸⁰

57. A Monument could be erected in remembrance of persons who passed away as victims of domestic violence.

⁸⁰ This is distinct from the Special Collaborative Programme for Support to Women and Children in Distress, which provides financial support to NGOs, Community Based Organizations and Non-State Actors working for the welfare of women and children in distress. It funds projects aimed at integrating women and children in distress into the mainstream of development.

(f) Consolidating Preventive Mechanisms

58. Prevention can take a number of forms but at their core they focus on changing gender-related attitudes and stereotypes at the individual level, among both men and women, and at the societal level.⁸¹

59. Awareness raising is at the core of prevention efforts and can include working with the general public to change societal attitudes and tolerance of domestic violence and other forms of gender-based violence, to expose the public to the magnitude of this problem, to end secrecy about gender-based violence and to send a clear message that it should not be tolerated. Public awareness campaigns can use a variety of media (television, radio, film, theater, dance, internet, etc.) as well as tools to spread messages (posters, brochures, calendars, t-shirts, etc.). Sustained efforts require significant funds, but at the same time it is critical that NGOs be involved in the design and distribution of messages to the public.⁸²

Legislation should mandate further government support and funding for public awareness-raising campaigns, in collaboration with NGOs, on domestic violence and other forms of gender-based violence,⁸³ including:

⁸¹ OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at p. 35. *Vide also* WHO, *Promoting Gender Equality to Prevent Violence against Women* (2009); WHO, *Violence Prevention – Changing Cultural and Social Norms that Support Violence* (2009).

⁸² For examples of global, regional and national public awareness campaigns, *vide* OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 36-47.

⁸³ The Ministry of Gender Equality, Child Development and Family Welfare organizes talks/workshops across the island and through radio programmes. It has published a series of Information, Education and Communication materials in terms of pamphlets/booklets which have been disseminated among the public at large. The collaboration

- General campaigns sensitizing the population about domestic violence and other forms of violence against women as a manifestation of inequality and a violation of women's human rights; and
- Specific awareness-raising campaigns designed to heighten knowledge of laws enacted to address gender-based violence and the remedies they contain.

Provision should be made for the following measures:

- Use of educational curricula to modify discriminatory social and cultural patterns of behaviour, as well as derogatory gender stereotypes; and
- Sensitization of the media regarding domestic violence and other forms of gender-based violence: Programs for media professionals are aimed at improving their awareness and understanding of domestic violence and other forms of gender-based violence. The goal of this type of awareness raising is that these professionals will use this information in their work to produce media reports that do not perpetuate stereotypes, such as victim-blaming, do not sensationalize the topic, that they protect the identity and confidentiality of the victim if he/she wishes and that they include information about victim services in reports of incidents of violence.⁸⁴

of the Mauritius College of the Air has also been sought for the mounting of short films to sensitise the population on their services and strategies adopted to combat domestic violence. A clip has been launched entitled “*Zero Violans Kont Fam*”: vide Reply to PQ B/153 [7 April 2009] and Answer to PQ B/679 [11 December 2012].

⁸⁴ Vide OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 52-54.

The Ministry of Gender Equality, Child Development and Family Welfare, in collaboration with Gender Links and Gender and Media Southern Africa (GEMSA), has organised several capacity building programmes for Journalists. With a view of encouraging participation of media practitioners, the Ministry has laid much emphasis on enhancement of capacity of media to provide appropriate reporting on GBV at all levels in the Costed National Action Plan to End Gender-Based Violence (2012-2015). The Ministry has also sought the collaboration of the University of Mauritius to include the component of GBV in the Gender Code of Ethics of the media which has been developed by the University of Mauritius: vide Answer to PQ B/331 [21 May 2013].

60. Awareness activities for policy makers and public officials can enhance the capacity of leaders to work on co-operation with communities and NGOs on problems that impact women or to put violence against women (domestic violence and other forms of gender-based violence) on the agenda of discussions about public health, public safety or budgeting.⁸⁵

Legislation should mandate

- Regular and institutionalized gender-sensitivity training and capacity-building on domestic violence for public officials; and
- That such training and capacity-building be developed and carried out in close consultation with non-governmental organizations and service providers for complainants/survivors of domestic violence and other forms of gender-based violence.

61. Sensitization programs aimed at men and boys should be further developed.⁸⁶ Prevention work that focuses on men and boys recognizes the role that men play in perpetuating violence and that such violent behavior and acceptance of violence are the result of socialization, cultural norms, definition of masculinities and historical gender roles.⁸⁷ Non-violent men and boys can play a critical role as “agents for changing attitudes,

⁸⁵ OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 49-52.

⁸⁶ The Ministry of Gender Equality, Child Development and Family Welfare has developed the Men as Partners Project, a gender sensitive project based on community involvement, which aims at partnership building, and focuses on concerted efforts for the attainment of the highest level of family harmony and happiness.

⁸⁷ *Vide* Council of Europe, Equality Division, Directorate General of Human Rights, *Violence within the Family: the Place and Role of Men* [EG-SEM-MV (2005) Proceedings]; *vide* also OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 54-61.

behaviour and the wider power relations which sustain gender-based violence ... Men have merits, capacities and attitudes that can be utilized to positively influence gender power relations and end gender-based violence. Men also play critical roles as protectors, supporters, and partners.”⁸⁸

62. As domestic violence is learned behaviour and the product of socialization, programs that engage young people are particularly powerful prevention tools as youth play a pivotal role in societal change.⁸⁹ From a young age, boys and girls can be taught about violence and non-violent behavior as well as given messages about equality and the value of mutual respect. Programs specifically for girls may focus on empowerment, raising their self-confidence and providing them with negotiation skills. Boys can be taught that violence is not acceptable and given communication skills as an alternative to violence. Coursework on gender issues or violence against women can be incorporated into the professional training at universities. Aside from specialized classes, educational institutions, particularly universities and colleges, can be settings for anti-violence awareness work and campaigning for improved responses to domestic violence and other forms of gender-based violence.⁹⁰ Legislation should provide:

- for compulsory education at all levels of schooling, from kindergarten to the tertiary level, on the human rights of women and girls, the promotion of gender equality, and in particular, the right of women and girls to be free from violence;

⁸⁸ UN Division for the Advancement of Women, *The Role of Men and Boys in Achieving Gender Equality- Report of the Expert Group Meeting* (2004), p. 32, para 89.

⁸⁹ Work with young people on domestic violence and other forms of gender-based violence as prevention efforts can take various forms: educational programs that aim to discourage violent behavior and model alternatives; specialized projects for youth who have experienced violence or are at risk for violence; and participatory projects that engage youth as activists: *vide* UN Women & World Association of Girl Guides and Girl Scouts, *A non-formal education programme for children and youth to help stop violence against girls – Handbook for Group Leaders* (2013).

⁹⁰ *Vide* OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 61-66.

- that such education be gender-sensitive and include appropriate information regarding existing laws that promote women's human rights and address violence against women; and
- that relevant curricula be developed in consultation with civil society.

63. To effectively combat domestic violence and other forms of gender-based violence, a broad cross-section of society must be involved.⁹¹ Resources must be further mobilized for work with non-elected community leaders, religious leaders and faith-based groups, neighbourhood associations, teachers, local businesses and others at the local level to build “communities of support” against any form of gender-based violence.⁹²

⁹¹ *Ibid.*, at pp. 67-69.

⁹² The Ministry of Gender Equality, Child Development and Family Welfare has ongoing activities and projects with Community Based Organisations, and other partners such as Zero Tolerance Clubs [as at 28 May 2013, seven Zero Tolerance Clubs had been established: *vide* Reply to PQ A/143]. It also runs Pre-Marital Counseling and Marriage Enrichment Programmes, as well as awareness sessions about Anger Management Techniques.

The Ministry has also sought the collaboration of the Ministry of Local Government, the Ministry of Social Security, National Solidarity and Senior Citizen Welfare & Reform Institutions and the Ministry of Environment and National Development Unit. The objective was to organise wider awareness programmes amongst the community on its services and on issues related to domestic violence. Through this partnership, officers working in Municipalities, District Councils, Community Centres, Social Welfare Centres and Citizen's Advice Bureaux have been requested to organise awareness programmes at community level so as to reach a wider segment of our population: *vide* Reply to PQ B/153 [7 April 2009]. The Victim Empowerment and Abuser Rehabilitation Policy (VEARP) Framework, which aims that we have a Mauritian society where Victims receive the support and justice they deserve and perpetrators are held accountable and provided with the opportunity to change their behavior, has been devised to sensitize employees and employers on gender-based violence. In 2013, a Training Manual (as well as the Training Kit Facilitator's Guide) has been devised by the Ministry. A Training Programme on the Victim Empowerment and Abuser Rehabilitation Policy was conducted with the Officers of the Human Resource Cadre of the Ministry of Civil Service and Administrative Reforms on Thursday 28 August 2014 at Fooks House.

The Ministry has also enlisted the collaboration of the Council of Religions, with a view to taking on board the various religious organisations on the issue of domestic violence.

(g) Improving Monitoring/Evaluation

64. Data can be a key resource in developing and evaluating policy. Administrative data reveals how many cases of different forms of violence have come to the attention of agencies, and may help institutions evaluate whether their responses, procedures and outcomes are satisfactory. Population-based data give a picture of prevalence and incidence of violence, as well as their context and background, whether certain groups are disproportionately affected, whether and where they have sought help or redress, and if not, why not.⁹³ Effective interventions are founded on accurate data about the specific type of domestic violence being addressed and the specific context. Collecting accurate data about the prevalence or scope of a particular form of gender-based violence, its causes and its consequences is the starting point for developing accurate and targeted interventions and should not be viewed as an end in itself.⁹⁴ Indeed, States are increasingly encouraged to ensure that their policies are informed by a stronger knowledge base.⁹⁵

65. Representative, population-based national surveys on experiences of violence as a victim are generally recognized as the best method of assessing prevalence and incidence, especially for harmful acts and acts of unlawful violence that are often not disclosed to any official body, as is the case with domestic violence and other forms of gender-based

⁹³ C. Hagemann-White, *Protecting Women against Violence - Analytical Study of the Results of the Fourth Round of Monitoring the Implementation of Recommendation Rec (2002) 5 on the Protection of Women against Violence in Council of Europe Member States* [2014], at p. 41.

⁹⁴ OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at p. 23.

⁹⁵ UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice [A/RES/65/228, 21 December 2010].

violence.⁹⁶ The discrepancy between the numbers of those who fall victim to violence and the numbers who report this to the police, the healthcare system, or any other authorities able to offer help can be seen as a measure of the effectiveness of agency intervention and of successful policy implementation.⁹⁷

66. At the international level, the UN Division for the Advancement of Women and the UN Statistical Committee are focusing on the development of global indicators to measure the extent of violence against women.⁹⁸ Several regional bodies have also developed indicators.⁹⁹

67. It is the responsibility of governmental structures to gather statistical data, but NGOs can play a key role in ensuring that the voices of victims are integrated into policy decisions. Experiences of individual victims on such topics as the consequences of violence, the impact of violence on their children and other family members, obstacles they encounter

⁹⁶ Regarding studies conducted in Mauritius, *vide* Mauritius Research Council, *A Study on the Extent, Nature and Costs of Domestic Violence to the Mauritian Economy* (2010); Gender Links, *Gender Based Violence Indicators Study - Mauritius Country Report* (2012); KPMG, *Criminological Research on Domestic Violence* (2000).

⁹⁷ C. Hagemann-White, *Protecting Women against Violence - Analytical Study of the Results of the Fourth Round of Monitoring the Implementation of Recommendation Rec (2002) 5 on the Protection of Women against Violence in Council of Europe Member States* [2014], at p. 44. *Vide* also OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at p. 24.

⁹⁸ UN Division for the Advancement of Women, *Indicators to Measure Violence against Women - Report of the Expert Group Meeting* (2007). *Vide* also 2008 Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, regarding “Indicators on violence against women and State response” [A/HRC/7/6].

⁹⁹ For example, the UN Economic Commission for Latin America and the Caribbean (ECLAC) has developed a *Technical Assistance Guide for the Production and Use of Gender Indicators* which proposes measuring rates of physical, psychological and sexual violence as well as unreported violence against women: *vide* UNIFEM, *Not a Minute More: Ending Violence Against Women* (2003).

The European Union has also developed indicators that can be used to assess individual States and to compare progress across nations in such areas as support services for women, the existence of laws and policies and budgetary allocations: *vide* FRA [European Union Agency for Fundamental Rights], *Violence against Women: An EU-wide Survey - Main Results* (2014).

in healthcare or the legal system when trying to leave situations of violence, where they receive assistance, etc., can inform the design of appropriate programs on prevention, prosecution and protection.¹⁰⁰

68. Monitoring the implementation of laws, the accessibility and responsiveness of services for victims and changes in societal attitudes towards violence against women are just some examples of a process that aids in understanding the dimension of the problem. Regular monitoring of the implementation of laws and of criminal justice professionals' action generally is an important tool for ensuring that the legal system functions properly to ensure consistent and fair prosecution of perpetrators and full protection for victims. Tracking how domestic violence cases are dealt with provides important information about possible weaknesses in the system.¹⁰¹

69. Monitoring how the media responds to and addresses violence against women can provide important information on the kinds of messages that society is regularly receiving about this issue and can provide useful insights into areas for potential sensitization and training for media professionals.¹⁰²

¹⁰⁰ Vide OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at p. 26. The World Health Organization (WHO) has developed guides on ethical and safety recommendations for research on violence against women in several specific contexts: vide WHO, *Putting Women First: Ethical and Safety Recommendations for Research on Domestic Violence against Women* (2003).

¹⁰¹ Vide OSCE Gender Section, *Bringing Security Home: Combating Violence against Women in the OSCE Region - A Compilation of Good Practices* (2009), at pp. 27-30.

¹⁰² *Ibid.*, at pp. 30-31.

70. The Domestic Violence Information System (DOVIS) must be made operational.¹⁰³

Legislation should:

- (1) Strengthen mechanisms for systematic and coordinated data collection on domestic violence;
- (2) Provide for population-based surveys, including crime surveys, for assessing the nature and extent of domestic violence;
- (3) Require that data and information be collected, analyzed, including data and information disaggregated by gender, for use in carrying out needs assessments, taking decisions and developing policy in the field of crime prevention and criminal justice, in particular concerning:
 - (a) The different forms of violence; the causes, risk factors and levels of severity of such violence; and the consequences and impacts of such violence, including on different population subgroups;
 - (b) The extent to which economic deprivation and exploitation are linked to domestic violence;
 - (c) The effect of various types of intervention on the individual offender and on the reduction and elimination of violence;
 - (d) The use of weapons and of drugs, alcohol and other substances in cases of domestic violence;
 - (e) The relationship between victimization or exposure to violence and subsequent violent activity;

¹⁰³ This is a computerized system, devised by the Ministry of Gender Equality, Child Development and Family Welfare, for the registration of reported cases of domestic violence. It is expected it shall become operational as from next year.

- (f) The consequences of violence on those who witness it, particularly within the family;
- (4) Provide for the monitoring, and publication of annual reports on, the number of cases of domestic violence reported to the police as well as other criminal justice agencies, including arrest, prosecution and case disposition of the offenders;
- (5) Provide for the evaluation of the efficiency and effectiveness of the criminal justice system in meeting the needs of victims subjected to violence, including with regard to the way in which the criminal justice system treats victims and witnesses of acts of violence, the use it makes of different intervention models and the degree to which it cooperates with providers of services to victims and witnesses, as well as to evaluate and assess the impact of current legislation, rules and procedures relating to domestic violence;
- (6) Provide for the evaluation of the efficiency and effectiveness of offender treatment, rehabilitation and reintegration programmes, in consultation with relevant stakeholders, including victims and victim service providers;
- (7) Provide for the development of a set of indicators to measure violence against women and to ensure a multisectoral, coordinated approach to the development, implementation, monitoring and evaluation of data collection initiatives; and
- (8) Provide sufficient financial support for research to be carried out on violence against women.

71. Following the enactment of the Protection of Domestic Violence Act in 1997, the Ministry has set up a Partnership against Domestic/Family Violence Committee: the

National Domestic Violence Committee.¹⁰⁴ A National Platform to End Gender-Based Violence was launched in October 2011, which has taken over the mandate of the National Domestic Violence Committee.¹⁰⁵

The terms of reference of the National Platform are as follows:

- (1) To provide logistic support for the elaboration of judicial instruments and mechanisms to address gender-based violence;
- (2) To ensure coordination and reinforce protective services for victims of gender-based violence by adopting a holistic approach;
- (3) To lobby and mobilize resources from regional and international funding institutions to end gender-based violence;
- (4) To reinforce the intervention and prevention mechanisms to address gender-based violence;
- (5) To sustain national campaigns against gender-based violence;

¹⁰⁴ Vide Reply to PQ A/144 (28 May 2013), in which the National Assembly was informed that the National Domestic Violence Committee was chaired by the then Minister of Women's Rights, Child Development and Family Welfare. It comprised senior officials of different Ministries/Departments and representatives of NGOs as follows –

- Ministry of Social Security, National Solidarity and Senior Citizens Welfare & Reform Institutions;
- Ministry of Education, Culture & Human Resources;
- Ministry of Health and Quality of Life;
- Prisons Department;
- Police Department;
- MACOSS;
- Media Watch Organization;
- SOS Femmes;
- Victim Support; and
- Council of Religions.

¹⁰⁵ In April 2009, following a meeting of the Council of Ministers of the Indian Ocean Commission (IOC) where IOC States reaffirmed their commitment to achieve gender equality and women's economic empowerment, IOC States were called upon to set up National Platforms.

- (6) To encourage media to develop Code of Ethics when addressing gender-based violence; and
- (7) To set up an Observatory for gender-based violence.

Legislation should provide for the creation of a specific, multi-sectoral mechanism to oversee implementation of the legislation and report back to Parliament on a regular basis. The functions of such a mechanism should include:

- Information gathering and analysis; interviews with complainants/survivors, law practitioners, police, prosecutors, judicial officers, probation officers and service providers regarding complainants/survivors' access to the legal system and the effectiveness of remedies, including obstacles faced by particular groups; and
- Proposal of amendments to legislation if necessary.

ANNEXES

(1) UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 12 (1989) Violence against Women

The Committee on the Elimination of Discrimination against Women,
Considering that articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life,

Taking into account Economic and Social Council resolution 1988/27,

Recommends to the States parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc.);
2. Other measures adopted to eradicate this violence;
3. The existence of support services for women who are the victims of aggression or abuses;
4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

(2) UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 12 (1992) Violence against Women

Background

1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.
2. In 1989, the Committee recommended that States should include in their reports information on violence and on measures introduced to deal with it (General recommendation 12, eighth session).
3. At its tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on article 6 and other articles of the Convention relating to violence towards women and the sexual harassment and exploitation of women. That subject was chosen in anticipation of the 1993 World Conference on Human Rights, convened by the General Assembly by its resolution 45/155 of 18 December 1990.
4. The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.
5. The Committee suggested to States parties that in reviewing their laws and policies, and in reporting under the Convention, they should have regard to the following comments of the Committee concerning gender-based violence.

General comments

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (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 equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

Comments on specific articles of the Convention

Articles 2 and 3

10. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16.

Articles 2(f), 5 and 10(c)

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family

violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.

12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.

Article 6

13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Article 11

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

Article 12

19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

20. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

Article 14

21. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

Article 16 (and article 5)

22. Compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.

23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Specific recommendation

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that:

- (a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;
- (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;
- (c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;
- (d) Effective measures should be taken to ensure that the media respect and promote respect for women;
- (e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures;
- (f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);
- (g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;
- (h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;
- (i) Effective complaints procedures and remedies, including compensation, should be provided;
- (j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;
- (k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;

- (l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;
- (m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;
- (n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;
- (o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;
- (p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;
- (q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;
- (r) Measures that are necessary to overcome family violence should include:
 - (i) Criminal penalties where necessary and civil remedies in cases of domestic violence;
 - (ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
 - (iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;
 - (iv) Rehabilitation programmes for perpetrators of domestic violence;
 - (v) Support services for families where incest or sexual abuse has occurred;
- (s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;
- (t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:
 - (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;
 - (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
 - (iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;
- (u) States parties should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims;

(v) The reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

(3) UN Declaration on the Elimination of Violence against Women [A/RES/48/104, 20 December 1993]

Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

- a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

- a. The right to life;
- b. The right to equality;

- c. The right to liberty and security of person;
- d. The right to equal protection under the law;
- e. The right to be free from all forms of discrimination;
- f. The right to the highest standard attainable of physical and mental health;
- g. The right to just and favourable conditions of work;
- h. The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- a. Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- b. Refrain from engaging in violence against women;
- c. Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- d. Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- e. Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in

plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

- f. Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- g. Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- h. Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- i. Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
- j. Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;
- k. Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women

and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

- l. Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- m. Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- n. Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- o. Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women;
- p. Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
- q. Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, inter alia:

- a. Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;
- b. Promote meetings and seminars with the aim of creating and

- raising awareness among all persons of the issue of the elimination of violence against women;
- c. Foster coordination and exchange within the United Nations system between human rights treaty bodies to address the issue of violence against women effectively;
 - d. Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;
 - e. Encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;
 - f. Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration;
 - g. Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;
 - h. Cooperate with non-governmental organizations in addressing the issue of violence against women.

Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

(4) Beijing Declaration and Platform for Action [15 September 1995] - Strategic Objectives D1 and D2 relating to “Violence against Women”

Strategic objective D.1. Take integrated measures to prevent and eliminate violence against women

Actions to be taken

124. By Governments:

- (a) Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women;
- (b) Refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (c) Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society;
- (d) Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators;
- (e) Work actively to ratify and/or implement international

human rights norms and instruments as they relate to violence against women, including those contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(f) Implement the Convention on the Elimination of All Forms of Discrimination against Women, taking into account general recommendation 19, adopted by the Committee on the Elimination of Discrimination against Women at its eleventh session;

(g) Promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women; actively encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and develop strategies to ensure that the revictimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices;

(h) Provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms;

(i) Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence, and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices;

(j) Formulate and implement, at all appropriate levels, plans

of action to eliminate violence against women;

(k) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(l) Create or strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges;

(m) Ensure that women with disabilities have access to information and services in the field of violence against women;

(n) Create, improve or develop as appropriate, and fund the training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuse of power leading to violence against women and sensitize such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured;

(o) Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the State who engage in acts of violence against women in the course of the performance of their duties; review existing legislation and take effective measures against the perpetrators of such violence;

(p) Allocate adequate resources within the government budget and mobilize community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all appropriate levels;

(q) Include in reports submitted in accordance with the provisions of relevant United Nations human rights instruments, information pertaining to violence against women and measures taken to implement the Declaration on the Elimination of Violence against Women;

(r) Cooperate with and assist the Special Rapporteur of the Commission on Human Rights on violence against women in the performance of her mandate and furnish all information requested; cooperate also with other competent mechanisms, such as the Special Rapporteur of the Commission on Human Rights on torture and the Special Rapporteur of the Commission on Human Rights on summary, extra-judiciary and arbitrary executions, in relation to violence against women;

(s) Recommend that the Commission on Human Rights renew the mandate of the Special Rapporteur on violence against women when her term ends in 1997 and, if warranted, to update and strengthen it.

125. By Governments, including local governments, community organizations, non-governmental organizations, educational institutions, the public and private sectors, particularly enterprises, and the mass media, as appropriate:

(a) Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence;

(b) Establish linguistically and culturally accessible services for migrant women and girls, including women migrant workers, who are victims of gender-based violence;

(c) Recognize the vulnerability to violence and other forms of abuse of women migrants, including women migrant workers, whose legal status in the host country depends on employers who may exploit their situation;

(d) Support initiatives of women's organizations and non-governmental organizations all over the world to raise awareness on the issue of violence against women and to contribute to its elimination;

(e) Organize, support and fund community-based education and training campaigns to raise awareness about violence against women as a violation of women's enjoyment of their human rights and mobilize local communities to use

appropriate gender-sensitive traditional and innovative methods of conflict resolution;

(f) Recognize, support and promote the fundamental role of intermediate institutions, such as primary health-care centres, family-planning centres, existing school health services, mother and baby protection services, centres for migrant families and so forth in the field of information and education related to abuse;

(g) Organize and fund information campaigns and educational and training programmes in order to sensitize girls and boys and women and men to the personal and social detrimental effects of violence in the family, community and society; teach them how to communicate without violence and promote training for victims and potential victims so that they can protect themselves and others against such violence;

(h) Disseminate information on the assistance available to women and families who are victims of violence;

(i) Provide, fund and encourage counselling and rehabilitation programmes for the perpetrators of violence and promote research to further efforts concerning such counselling and rehabilitation so as to prevent the recurrence of such violence;

(j) Raise awareness of the responsibility of the media in promoting non-stereotyped images of women and men, as well as in eliminating patterns of media presentation that generate violence, and encourage those responsible for media content to establish professional guidelines and codes of conduct; also raise awareness of the important role of the media in informing and educating people about the causes and effects of violence against women and in stimulating public debate on the topic.

126. By Governments, employers, trade unions, community and youth organizations and non-governmental organizations, as appropriate:

(a) Develop programmes and procedures to eliminate sexual

harassment and other forms of violence against women in all educational institutions, workplaces and elsewhere;

(b) Develop programmes and procedures to educate and raise awareness of acts of violence against women that constitute a crime and a violation of the human rights of women;

(c) Develop counselling, healing and support programmes for girls, adolescents and young women who have been or are involved in abusive relationships, particularly those who live in homes or institutions where abuse occurs;

(d) Take special measures to eliminate violence against women, particularly those in vulnerable situations, such as young women, refugee, displaced and internally displaced women, women with disabilities and women migrant workers, including enforcing any existing legislation and developing, as appropriate, new legislation for women migrant workers in both sending and receiving countries.

127. By the Secretary-General of the United Nations:

Provide the Special Rapporteur of the Commission on Human Rights on violence against women with all necessary assistance, in particular the staff and resources required to perform all mandated functions, especially in carrying out and following up on missions undertaken either separately or jointly with other special rapporteurs and working groups, and adequate assistance for periodic consultations with the Committee on the Elimination of Discrimination against Women and all treaty bodies.

128. By Governments, international organizations and non-governmental organizations:

Encourage the dissemination and implementation of the UNHCR Guidelines on the Protection of Refugee Women and the UNHCR Guidelines on the Prevention of and Response to Sexual Violence against Refugees.

Strategic objective D.2. Study the causes and consequences of violence against women and the effectiveness of preventive measures

Actions to be taken

129. By Governments, regional organizations, the United Nations, other international organizations, research institutions, women's and youth organizations and non-governmental organizations, as appropriate:

- (a) Promote research, collect data and compile statistics, especially concerning domestic violence relating to the prevalence of different forms of violence against women, and encourage research into the causes, nature, seriousness and consequences of violence against women and the effectiveness of measures implemented to prevent and redress violence against women;
- (b) Disseminate findings of research and studies widely;
- (c) Support and initiate research on the impact of violence, such as rape, on women and girl children, and make the resulting information and statistics available to the public;
- (d) Encourage the media to examine the impact of gender role stereotypes, including those perpetuated by commercial advertisements which foster gender-based violence and inequalities, and how they are transmitted during the life cycle, and take measures to eliminate these negative images with a view to promoting a violence-free society.

**(5) Report of UN Special
Rapporteur on Violence against
Women, its Causes and
Consequences – A Framework
for Model Legislation on
Domestic Violence
[E/CN.4/1996/53/Add.2]**

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Introduction

1. This framework for model legislation outlines important elements which are integral to comprehensive legislation on domestic violence. The objective of this model legislation is to serve as a drafting guide to legislatures and organizations committed to lobbying their legislatures for comprehensive legislation on domestic violence.

I. DECLARATION OF PURPOSE

2. The purpose of this legislation is to:

- (a) Comply with international standards sanctioning domestic violence;
- (b) Recognize that domestic violence is gender-specific violence directed against women, occurring within the family and within interpersonal relationships;
- (c) Recognize that domestic violence constitutes a serious crime against the individual and society which will not be excused or tolerated;
- (d) Establish specific legislation prohibiting violence against women within interpersonal and family relationships, protecting victims of such violence and preventing further violence;
- (e) Create a wide range of flexible and speedy remedies (including remedies under special domestic violence legislation, penal and civil remedies) to discourage domestic violence and harassment of women within interpersonal relationships and within the family and protect women where such violence has taken place;
- (f) Assure victims of domestic violence the maximum protection in cases ranging from physical and sexual to psychological violence;
- (g) Establish departments, programmes, services, protocols and duties, including but not limited to shelters, counselling programmes and job-training programmes to aid victims of domestic violence;
- (h) Facilitate enforcement of the criminal laws by deterring and punishing violence against women within special interpersonal relationships;
- (i) Enumerate and provide by law comprehensive support services, including but not limited to:
 - (i) Emergency services for victims of abuse and their families;
 - (ii) Support programmes that meet the specific needs of

victims of abuse and their families;

(iii) Education, counselling and therapeutic programmes for the abuser and the victim;

(iv) Programmes to assist in the prevention and elimination of domestic violence which includes raising public awareness and public education on the subject.

(j) Expand the ability of law enforcement officers to assist victims and to enforce the law effectively in cases of domestic violence and to prevent further incidents of abuse;

(k) Train judges to be aware of the issues relating to child custody, economic support and security for the victims in cases of domestic violence by establishing guidelines for protection orders and sentencing guidelines which do not trivialize domestic violence;

(l) Provide for and train counsellors to support police, judges and the victims of domestic violence and to rehabilitate perpetrators of domestic violence;

(m) Develop a greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence.

II. DEFINITIONS

3. It is urged that States adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs, bearing in mind that such violations are not as culture-specific as initially observed, since increasing migration flows are blurring distinctive cultural practices, formally or informally. Furthermore, the broadest definitions should be adopted with a view to compatibility with international standards.

4. States are urged to enact comprehensive domestic violence legislation which integrates criminal and civil remedies rather than making marginal amendments to existing penal and civil laws.

A. Domestic violence

5. Legislation shall clearly state that violence against women in the family and violence against women within interpersonal relationships constitute domestic violence.

6. The language of the law must be clear and unambiguous in protecting women victims from gender-specific violence within the family and intimate relationships. Domestic violence must be distinguished from intra-family violence and legislated for accordingly.

B. Relationships to be regulated

7. The relationships which come within the purview of legislation on domestic violence must include: wives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers.

8. States should not permit religious or cultural practices to form an impediment to offering all women this protection.

9. States should offer this protection to non-national women and hold non-national men accountable to the same standards as men of their nationality.

10. There shall be no restrictions on women bringing suits against spouses or live-in partners. Evidence laws and criminal and civil procedure codes shall be amended to provide for such contingencies.

C. Acts of domestic violence

11. All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed "domestic violence".

III. COMPLAINT MECHANISMS

12. The law shall provide for victims, witnesses of domestic violence, family members and close associates of victims, State and private medical service providers and domestic violence assistance centres to complain of incidents of domestic violence to the police or file action in court.

A. Duties of police officers

13. The law shall provide that police officers shall respond to every request for assistance and protection in cases of alleged domestic violence.

14. Police officers shall not assign a lower priority to calls concerning alleged abuse by family and household members than to calls alleging similar abuse and violations by strangers.

15. Police shall respond at the scene of domestic violence when:

(a) The reporter indicates that violence is imminent or is in progress;

(b) The reporter indicates that an order relative to domestic violence is in effect and is likely to be breached;

(c) The reporter indicates that domestic violence has occurred previously.

16. The police shall respond promptly even where the reporter is not the victim of the violence but is a witness of the violence, a friend or a relative of the victim, or is a health provider or professional working at a domestic violence assistance centre.

17. On receiving the complaint the police shall:

(a) Interview the parties and witnesses, including children, in separate rooms to ensure an opportunity to speak freely;

(b) Record the complaint in detail;

(c) Advise the victim of her rights as outlined below;

(d) Fill out and file a domestic violence report as provided for by the law;

(e) Provide or arrange transport for the victim to the nearest hospital or medical facility for treatment, if it is required;

(f) Provide or arrange transport for the victim and the victim's children or dependents to a safe place or shelter, if it is required;

(g) Provide protection to the reporter of violence;

(h) Arrange for the removal of the offender from the home and, if that is not possible and if the victim is in continuing danger, arrest the offender.

B. Alternative complaint procedure

18. The victim, witness or reporter may file a complaint alleging an act of domestic violence in the judicial division where:

(a) The offender resides;

(b) The victim resides;

(c) Where the violence took place;

(d) Where the victim is temporarily residing if she has left

her residence to avoid further abuse.

19. The victim may file a complaint alleging an act of domestic violence with a State or private health facility, which shall direct it to the police in the judicial division where that health facility is located.

20. A relative, friend or person from whom the victim requests assistance may file a complaint alleging an act of domestic violence with the police, who shall investigate it accordingly.

C. Statement of the victim's rights

21. The purpose of the statement of the victim's rights is to acquaint the victim with the legal remedies available to her during the initial stage when she complains of an infringement of her legal rights. It also outlines the duties of the police and the judiciary in relation to the victim:

(a) The police officer shall communicate to the victim in a language understood by the victim, identifying himself or herself by name and badge number. The law requires that the police officer inform the victim of domestic violence that, if a crime is alleged to have been committed against her, the officer must either arrest the suspect immediately, persuade him to leave the household or remove him from the household;

(b) The officer must drive the victim or help her find transport to a medical facility to have her injuries attended to;

(c) If the victim wants to leave her residence the officer must help her to find transport to a safe place or shelter;

(d) The officer shall take all reasonable steps to ensure that the victim and her dependents are safe;

(e) The officer must provide the victim with a written statement of the legal procedures available to her, in a language that she understands. The statement must indicate

that:

- (i) The law provides that the victim may seek an ex parte restraining court order and/or a court order prohibiting further abuse against the victim, her dependents, anyone in her household or anyone from whom she requests assistance and refuge;
- (ii) The restraining order and/or court order shall protect the victim's property or property held in common from destruction;
- (iii) The restraining order may order the offender to vacate the family home;
- (iv) In the event of the violence taking place during the night, at weekends or on public holidays, the victim must be informed of emergency relief measures to obtain a restraining order by calling the judge on duty;
- (v) The victim need not hire a lawyer to get an ex parte restraining order or court order;
- (vi) The offices of the clerk of the court shall provide forms and non-legal assistance to persons seeking to proceed with ex parte restraining orders or court orders. To obtain a court order, the victim must be advised to apply to the court in the prescribed district/jurisdiction;
- (vii) The police shall serve the ex parte restraining order on the offender.

D. Domestic violence report

22. It shall be the duty of the police officer responding to a domestic violence call to complete a domestic violence report which shall be a part of the record. The report should be collated by the Department of Justice and (where applicable) the family court.

23. The domestic violence report shall be on a form prescribed by the police commissioner. It shall include but not be limited to:

- (a) The relationship of the parties;

- (b) The sex of the parties;
- (c) Information regarding the occupational and educational levels of the parties;
- (d) The time and date the complaint was received;
- (e) The time the officer began investigation of the complaint;
- (f) Whether children were involved and whether the domestic violence took place in the presence of children;
- (g) The type and extent of the abuse;
- (h) The number and type of weapons used;
- (i) The amount of time taken in handling the case and the actions taken by the officer;
- (j) The effective date and terms of the order issued concerning the parties;
- (k) Any other data necessary for a complete analysis of all the circumstances leading to the alleged incident of domestic violence.

24. It shall be the duty of the police commissioner to compile and report annually to the Departments of Justice/Women's Affairs and the Parliament all data collected from the domestic violence reports.

25. The annual report shall include but not be limited to:
- (a) The total number of reports received;
 - (b) The number of reports made by the victims of each sex;
 - (c) The number of reports investigated;
 - (d) The average time lapse in responding to each report;
 - (e) The type of police action taken in disposing cases including the number of arrests.

IV. DUTIES OF JUDICIAL OFFICERS

A. Ex parte temporary restraining order

26. An ex parte order may be issued on the application of a victim of violence in circumstances where the defendant chooses not to appear in court or cannot be summoned

because he is in hiding. An ex parte order may contain a preliminary injunction against further violence and/or preventing the abuser/defendant from disturbing the victim/plaintiff's use of essential property, including the common home.

27. It is also recommended that a wider category of persons besides the victim of violence apply for a restraining order. It is conceivable that the victim may not be in a position to have access to the legal system. It is also conceivable that witnesses and persons offering assistance to the victim may also be in danger of violence.

28. Where a situation of grave danger exists to the life, health and well-being of the victim and she is unlikely to be safe until a court order is issued, the victim/plaintiff, a relative or welfare worker may apply to a judge or magistrate on duty to provide emergency relief, such as an ex parte temporary restraining order to be issued against the abuser within 24 hours of violence occurring.

29. The ex parte temporary restraining order may:

- (i) Compel the offender to vacate the family home;
- (ii) Regulate the offender's access to dependent children;
- (iii) Restrain the offender from contacting the victim at work or other places frequented by the victim;
- (iv) Compel the offender to pay the victim's medical bills;
- (v) Restrict the unilateral disposal of joint assets;
- (vi) Inform the victim and the offender that if the offender violates the restraining order, he may be arrested and criminal charges brought against him;
- (vii) Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the offender;
- (viii) Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation and

application for criminal prosecution, she can initiate a civil process and sue for divorce, separation, damages or compensation;

(xi) Require each party to fulfil his/her continuing duty to inform the court at each proceeding for an order of protection at any civil litigation, proceeding in juvenile court and/or criminal proceedings involving either party.

30. Emergency relief would include an ex parte temporary restraining order, to remain in effect until a court order is issued but for not more than 10 days after the ex parte temporary restraining order has been issued.

31. The plaintiff must be informed of the following:

(a) That, notwithstanding use of an ex parte restraining order under domestic violence legislation, she can apply for a court order to protect her from further violence or for a renewal of that court order, and/or request the prosecutor to file a criminal complaint against the defendant;

(b) That an application for an ex parte restraining order in no way affects her access to other civil remedies such as the right to apply for a judicial separation, divorce or compensation for damages;

(c) That, on 24 hours' notice to the plaintiff, the defendant may move for a dissolution or modification of the temporary restraining order.

32. Non-compliance with an ex parte restraining order shall result in prosecution for contempt of court proceedings, a fine and imprisonment.

B. Protection orders

33. Application for a protection order may be made by the victim, a relative, a welfare worker or person assisting the victim of domestic violence.

34. Application for protection orders may be made on the expiry of ex parte restraining orders or independently of such restraining orders.

35. Protection orders may operate to protect the victim, a relative, a welfare worker or person assisting the victim of domestic violence from further violence or threats of violence.

36. Judges should be required to conduct hearings within 10 days of the complaint and application for a protection order.

37. Judges should uphold the provisions outlined in the victim's statement of rights.

38. The court order may provide any or all of the following relief:

- (a) Restrain the offender/defendant from causing further violence to the victim/plaintiff, her dependents, other relatives and persons who give her assistance from domestic abuse;
- (b) Instruct the defendant to vacate the family home, without in any way ruling on the ownership of such property;
- (c) Instruct the defendant to continue to pay the rent or mortgage and to pay maintenance to the plaintiff and their common dependents;
- (d) Instruct the defendant to hand over the use of an automobile and/or other essential personal effects to the plaintiff;
- (e) Regulate the defendant's access to dependent children;
- (f) Restrain the defendant from contacting the plaintiff at work or other places frequented by the plaintiff;
- (g) Upon finding that the defendant's use or possession of a weapon may pose a serious threat of harm to the plaintiff, prohibit the defendant from purchasing, using or possessing a firearm or any such weapon specified by the court;

- (h) Instruct the defendant to pay the plaintiff's medical bills, counselling fees or shelter fees;
- (i) Prohibit the unilateral disposition of joint assets;
- (j) Inform the plaintiff and the defendant that, if the defendant violates the restraining order, he may be arrested with or without a warrant and criminal charges brought against him;
- (k) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the defendant;
- (l) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can activate the civil process and sue for divorce, separation, damages or compensation;
- (m) Conduct hearings in camera to protect the privacy of the parties.

39. The burden of proof in these proceedings is on the accused to demonstrate that such domestic violence did not take place.

40. Judges should order the dispatch of copies of all protection/restraining orders issued to the police zones where the plaintiff and those protected by the order reside, within 24 hours of the issuing order.

41. Compliance with protection orders shall be monitored by the police and the courts. Violation of a protection order is a crime. Non-compliance shall result in a fine, contempt of court proceedings and imprisonment.

42. Where the plaintiff files an affidavit that she does not have the funds to pay the costs of filing for an ex parte restraining order or a protection order, the orders shall be filed without the payment of fees.

43. Mala fide and unjustified claims for a protection order may move the court to order the plaintiff to pay costs and damages to the defendant.

V. CRIMINAL PROCEEDINGS

44. The prosecuting attorney or attorney-general shall develop, adopt and put into effect written procedures for officials prosecuting crimes of domestic violence.

45. When a court dismisses criminal charges in a crime involving domestic violence, the specific reasons for dismissal must be recorded in the court file.

46. In criminal actions concerning domestic violence, the prosecuting attorney shall charge in the information sheet that the alleged act is one of domestic violence.

47. The victim's testimony shall be sufficient for prosecution. No move to dismiss a complaint shall be made solely on the grounds of uncorroborated evidence.

48. Upon conviction for a domestic violence offence, the judgment shall so indicate the results of the case.

49. During the trial phase, the defendant accused of domestic violence shall have no unsupervised contact with the plaintiff.

50. The issue of a restraining order or protection order may be introduced as a material fact in subsequent criminal proceedings.

51. Depending on the nature of the offence, and where a defendant is charged for the first time with a minor domestic violence offence and pleads guilty, a deferred sentence and

counselling may be imposed, along with a protection order, provided that the consent of the victim is obtained.

52. Upon conviction of a defendant for a serious crime of domestic violence, the court may order a term of incarceration and counselling.

53. Enhanced penalties are recommended in cases of domestic violence involving repeat offences, aggravated assault and the use of weapons.

54. Counselling shall not be recommended in lieu of a sentence in cases of aggravated assault.

55. Clear sentencing guidelines shall be established.

VI. CIVIL PROCEEDINGS

56. A protection order may be issued while civil proceedings for divorce, judicial separation or compensation are pending.

57. In these circumstances, protection orders may be issued in addition to and not in lieu of civil proceedings.

58. Protection orders and restraining orders may be issued independently, unaccompanied by an application for divorce or judicial separation.

59. The issuance of a restraining order or protection order may be introduced as a material fact in subsequent civil proceedings.

VII. PROVISION OF SERVICES

A. Emergency services

60. The State must provide emergency services which shall

include:

- (i) Seventy-two hour crisis intervention services;
- (ii) Constant access and intake to services;
- (iii) Immediate transportation from the victim's home to a medical centre, shelter or safe haven;
- (iv) Immediate medical attention;
- (v) Emergency legal counselling and referrals;
- (vi) Crisis counselling to provide support and assurance of safety;
- (vii) Confidential handling of all contacts with victims of domestic violence and their families.

B. Non-emergency services

61. States must provide non-emergency services which shall include:

- (a) Delivery of services to assist in the long-term rehabilitation of victims of domestic violence through counselling, job training and referrals;
- (b) Delivery of services to assist in the long-term rehabilitation of abusers through counselling;
- (c) Programmes for domestic violence which are administered independently of welfare assistance programmes;
- (d) Delivery of services in cooperation and coordination with public and private, State and local services and programmes.

C. Training of police officials

62. The police department shall establish and maintain an education and training programme for police officers to acquaint them with:

- (a) The nature, extent, causes and consequences of domestic violence;
- (b) The legal rights and remedies available to victims of domestic violence;
- (c) The services and facilities available to victims and

abusers;

(d) The legal duties imposed on police officers to make arrests and to offer protection and assistance;

(e) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and promote the safety of the victim and her dependents.

63. Every police cadet should be trained to respond to domestic violence cases.

64. Special units should also be established where police officers receive intensive and specialized training to handle more complex cases.

65. Educators, psychologists and victims should participate in seminar programmes to sensitize the police.

D. Training of judicial officers

66. Provision shall be made to conduct on-going training programmes for judicial officers on the handling of domestic violence cases. Training shall include guidelines on:

- (i) The issuing of ex parte restraining orders;
- (ii) The issuing of protection orders;
- (iii) Guidance to be given to victims on available legal remedies;
- (iv) Sentencing guidelines.

67. Training shall include an initial course for a prescribed number of hours and an annual review for a prescribed number of hours.

68. Special family courts should also be established and the judiciary should be provided with intensive and specialized training to handle more complex cases.

E. Training of counsellors

69. States shall provide trained counsellors to support the police, judges, victims of domestic violence and perpetrators of violence.

70. The law shall mandate counselling programmes for perpetrators as a supplement to and not as an alternative to the criminal justice system.

71. Counselling programmes must be designed to:

- (i) Help the perpetrator take responsibility for his violence and make a commitment not to inflict further violence;
- (ii) Educate the perpetrator on the illegality of violence.

72. Funding for counselling and perpetrator programmes should not be taken from resources assigned to victims of violence.

73. The law should provide but not mandate counselling for victims of violence. Counselling for victims of violence must be:

- (a) Provided as a free service;
- (b) Empowering to the victim and assist her in deciding on short-term and long-term strategies to protect herself from further violence and to restore the normality of her life.

(6) UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice [A/RES/65/228, 21 December 2010]

Preamble

1. The multifaceted nature of violence against women necessitates different strategies to respond to the diverse manifestations of violence and the various settings in which it occurs, both in private and public life, whether committed in the home, the workplace, educational and training institutions, the community or society, in custody or in situations of armed conflict or natural disaster. In the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, the importance of adopting a systematic, comprehensive, coordinated, multisectoral and sustained approach to fighting violence against women is recognized. The practical measures, strategies and activities described below can be introduced in the field of crime prevention and criminal justice to address violence against women. Except where otherwise specified, the term “women” encompasses “girl children”.

2. Violence against women exists in every country in the world as a pervasive violation of human rights and a major impediment to achieving gender equality, development and peace. Violence against women is rooted in historically unequal power relations between men and women. All forms of violence against women seriously violate and impair or

nullify the enjoyment by women of all human rights and fundamental freedoms and have serious immediate and long-term implications for health, including sexual and reproductive health, for example through increased vulnerability to HIV/AIDS, and public safety, and have a negative impact on the psychological, social and economic development of individuals, families, communities and States.

3. Violence against women is often embedded in and supported by social values, cultural patterns and practices. The criminal justice system and legislators are not immune to such values and thus have not always regarded violence against women with the same seriousness as other types of violence. Therefore, it is important that States strongly condemn all forms of violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligation with respect to its elimination and that the criminal justice system recognize violence against women as a gender related problem and as an expression of power and inequality.

4. Violence against women is defined in the Declaration on the Elimination of Violence against Women and reiterated in the Beijing Platform for Action adopted by the Fourth World Conference on Women to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The updated Model Strategies and Practical Measures build on the measures adopted by Governments in the Platform for Action, which was adopted in 1995 and subsequently reaffirmed in 2000 and 2005, the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice adopted in 1997, and relevant General

Assembly resolutions, including resolutions 61/143 and 63/155, bearing in mind that some groups of women are especially exposed and vulnerable to violence.

5. The updated Model Strategies and Practical Measures specifically acknowledge the need for an active policy of mainstreaming a gender perspective in all policies, programmes and practices to ensure gender equality and equal and fair access to justice, as well as establishing the goal of gender balance in all areas of decision-making, including those related to the elimination of violence against women. The updated Model Strategies and Practical Measures should be applied as guidelines in a manner consistent with relevant international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the International Covenant on Civil and Political Rights, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Rome Statute of the International Criminal Court and the Guidelines for the Prevention of Crime, with a view to furthering their fair and effective implementation. The updated Model Strategies and Practical Measures reaffirm the commitment of States to promote gender equality and empower women with a view to meeting goal 3 of the Millennium Development Goals.

6. The updated Model Strategies and Practical Measures should be endorsed by national legislation and implemented by Member States and other entities in a manner consistent with the right to equality before the law, while also recognizing that gender equality may sometimes require the adoption of different approaches that acknowledge the

different ways in which violence affects women as compared to men. Member States should ensure that women have equal protection under the law and equal access to justice in order to facilitate efforts by Governments to prevent and sanction acts of violence against women through comprehensive and coordinated policies and strategies and to deal with all forms of violence against women within the criminal justice system.

7. The updated Model Strategies and Practical Measures recognize that crime prevention and criminal justice responses to violence against women must be focused on the needs of victims and empower individual women who are victims of violence. The updated Model Strategies and Practical Measures aim at ensuring that prevention and intervention efforts are made to not only stop and appropriately sanction violence against women but also restore a sense of dignity and control to the victims of such violence.

8. The updated Model Strategies and Practical Measures aim at contributing to de jure and de facto equality between women and men. The updated Model Strategies and Practical Measures do not give preferential treatment to women but aim at ensuring that any inequalities or forms of discrimination that women face in accessing justice, particularly in respect of acts of violence, are redressed.

9. The updated Model Strategies and Practical Measures recognize that sexual violence is an issue of international peace and security, as outlined in Security Council resolutions 1325 (2000) and 1820 (2008) on women and peace and security, particularly the need for parties to armed conflict to adopt prevention and protection measures in order to end sexual violence.

10. The updated Model Strategies and Practical Measures

recognize that some special groups of women are particularly vulnerable to violence, either because of their nationality, ethnicity, religion or language, or because they belong to an indigenous group, are migrants, are stateless, are refugees, live in underdeveloped, rural or remote communities, are homeless, are in institutions or in detention, have disabilities, are elderly, are widowed or live in conflict, post-conflict or disaster situations, and as such they require special attention, intervention and protection in the development of crime prevention and criminal justice responses to violence against women.

11. The updated Model Strategies and Practical Measures recognize advances in crime prevention and criminal justice responses to violence against women and the importance of investing in the prevention of violence against women.

12. The updated Model Strategies and Practical Measures recognize that States have the obligation to promote and protect the human rights and fundamental freedoms of all people, including women, and that they must exercise due diligence and take relevant measures to prevent, investigate and punish the perpetrators of violence against women, to eliminate impunity and to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of women's human rights and fundamental freedoms.

I. Guiding principles

13. Member States are urged:

- (a) To be guided by the overall principle that effective crime prevention and criminal justice responses to violence against women are human rights-based, manage risk and promote victim safety and empowerment while ensuring offender accountability;
- (b) To develop mechanisms to ensure a comprehensive,

coordinated, systematic and sustained approach for the implementation of the updated Model Strategies and Practical Measures at the national, regional and international levels;

(c) To promote the involvement and participation of all relevant sectors of government and civil society and other stakeholders in the implementation process;

(d) To commit adequate and sustained resources and develop monitoring mechanisms to ensure their effective implementation and oversight;

(e) To take into account in the implementation of the updated Model Strategies and Practical Measures the varying needs of women subjected to violence.

II. Criminal law

14. Member States are urged:

(a) To review, evaluate and update their national laws, policies, codes, procedures, programmes and practices, especially their criminal laws, on an ongoing basis to ensure and guarantee their value, comprehensiveness and effectiveness in eliminating all forms of violence against women and to remove provisions that allow for or condone violence against women or that increase the vulnerability or revictimization of women who have been subject to violence;

(b) To review, evaluate and update their criminal and civil laws in order

to ensure that all forms of violence against women are criminalized and prohibited and, if not, to adopt measures to do so, including measures aimed at preventing, protecting, empowering and supporting survivors, adequately punishing perpetrators and ensuring available remedies for victims;

(c) To review, evaluate and update their criminal laws in order to ensure that:

(i) Persons who are brought before the courts on judicial

matters in respect of violent crimes or who are convicted of such crimes can be restricted in their possession and use of firearms and other regulated weapons, within the framework of their national legal systems;

(ii) Individuals can be prohibited or restrained, within the framework of their national legal systems, from harassing, intimidating or threatening women;

(iii) The laws on sexual violence adequately protect all persons against sexual acts that are not based on the consent of both parties;

(iv) The law protects all children against sexual violence, sexual abuse, commercial sexual exploitation and sexual harassment, including crimes committed through the use of new information technologies, including the Internet;

(v) Harmful traditional practices, including female genital mutilation, in all of their forms, are criminalized as serious offences under the law;

(vi) Trafficking in persons, especially women and girls, is criminalized;

(vii) Individuals who are serving in the armed forces or in United Nations peacekeeping operations should be investigated and punished for committing acts of violence against women abroad;

(d) To continually review, evaluate and update their national laws, policies, practices and procedures taking into account all relevant international legal instruments in order to effectively respond to violence against women, including to ensure that such measures complement and are consistent with the criminal justice system's response to such violence and that civil law decisions reached in marital dissolutions, child custody decisions and other family law proceedings for cases involving domestic violence or child abuse adequately safeguard victims and the best interests of children;

(e) To review and, where appropriate, revise, amend or abolish any laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and to ensure that provisions of multiple

legal systems, where they exist, comply with international human rights obligations, commitments and principles, in particular the principle of non-discrimination.

III. Criminal procedure

15. Member States are urged to review, evaluate and update their criminal procedures, as appropriate and taking into account all relevant international legal instruments, in order to ensure that:

- (a) The police and other law enforcement agencies have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women and to take immediate measures to ensure the safety of victims;
- (b) The primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with women subjected to violence, regardless of the level or form of violence;
- (c) Women subjected to violence are enabled to testify in criminal proceedings through adequate measures that: facilitate such testimony by protecting the privacy, identity and dignity of the women; ensure safety during legal proceedings; and avoid “secondary victimization”. In jurisdictions where the safety of the victim cannot be guaranteed, refusing to testify should not constitute a criminal or other offence; “Secondary victimization” is victimization that occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victim;
- (d) Evidentiary rules are non-discriminatory; all relevant evidence can be brought before the court; rules and principles of defence do not discriminate against women; and “honour” or “provocation” cannot be invoked by perpetrators of violence against women to escape criminal responsibility;
- (e) The credibility of a complainant in a sexual violence case

is understood to be the same as that of a complainant in any other criminal proceeding; the introduction of the complainant's sexual history in both civil and criminal proceedings should be prohibited where it is unrelated to the case; and no adverse inference should be drawn solely from a delay of any length between the alleged commission of a sexual offence and the reporting thereof;

(f) People who perpetrate acts of violence against women while voluntarily under the influence of alcohol, drugs or other substances are not exempted from criminal responsibility;

(g) Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law;

(h) Police and courts have the authority to issue and enforce protection and restraining or barring orders in cases of violence against women, including removal of the perpetrator from the domicile and prohibition of further contact with the victim and other affected parties, inside and outside the domicile, to issue and enforce child support and custody orders and to impose penalties for breaches of those orders. If such powers cannot be granted to the police, measures must be taken to ensure timely access to court decisions in order to ensure swift action by the court. Such protective measures should not be dependent on initiating a criminal case;

(i) Comprehensive services and protection measures are taken when necessary to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, without prejudice to the victim's ability or willingness to participate in an investigation or prosecution, and to protect them from intimidation and retaliation, including by establishing comprehensive witness and victim protection programmes;

(j) Safety risks, including the vulnerability of victims, are taken into account in decisions concerning non-custodial or

quasi-custodial sentences, the granting of bail, conditional release, parole or probation, especially when dealing with repeat and dangerous offenders;

(k) Claims of self-defence by women who have been victims of violence, particularly in cases of battered woman syndrome, are taken into account in investigations, prosecutions and sentences against them; Battered woman syndrome is suffered by women who, because of repeated violent acts by an intimate partner, may suffer depression and are unable to take any independent action that would allow them to escape the abuse, including by refusing to press charges or accepting offers of support;

(l) All procedures and complaint mechanisms are accessible to women who are victims of violence without fear of reprisal or discrimination.

IV. Police, prosecutors and other criminal justice officials

16. Member States are urged, within the framework of their national legal systems, as appropriate and taking into account all relevant international legal instruments:

(a) To ensure that the applicable provisions of laws, policies, procedures, programmes and practices related to violence against women are consistently and effectively implemented by the criminal justice system and supported by relevant regulations as appropriate;

(b) To develop mechanisms to ensure a comprehensive, multidisciplinary, coordinated, systematic and sustained response to violence against women in order to increase the likelihood of successful apprehension, prosecution and conviction of the offender, contribute to the well-being and safety of the victim and prevent secondary victimization;

(c) To promote the use of specialized expertise in the police, among prosecution authorities and in other criminal justice agencies, including through the establishment, where

possible, of specialized units or personnel and specialized courts or dedicated court time, and to ensure that all police officers, prosecutors and other criminal justice officials receive regular and institutionalized training to sensitize them to gender and child-related issues and to build their capacity with regard to violence against women;

(d) To promote the development and implementation of appropriate policies among different criminal justice agencies to ensure coordinated, consistent and effective responses to violence perpetrated against women by personnel within such agencies and to ensure that attitudes of criminal justice officials that foster, justify or tolerate violence against women are held up to public scrutiny and sanction;

(e) To develop and implement policies and appropriate responses regarding the investigation and collection of evidence that take into account the unique needs and perspectives of victims of violence, respect their dignity and integrity and minimize intrusion into their lives while abiding by standards for the collection of evidence;

(f) To ensure that criminal justice officials and victims' advocates conduct risk assessments that indicate the level or extent of harm victims may be subjected to based on the vulnerability of victims, the threats to which they are exposed, the presence of weapons and other determining factors;

(g) To ensure that laws, policies, procedures and practices pertaining to decisions on the arrest, detention and terms of any form of release of the perpetrator take into account the need for the safety of the victim and others related through family, socially or otherwise and that such procedures also prevent further acts of violence;

(h) To establish a registration system for judicial protection, restraining or barring orders, where such orders are permitted by national law, so that police or criminal justice officials can quickly determine whether such an order is in force;

- (i) To empower and equip police, prosecutors and other criminal justice officials to respond promptly to incidents of violence against women, including by drawing on a rapid court order where appropriate and by taking measures to ensure the fast and efficient management of cases;
- (j) To ensure that the exercise of powers by police, prosecutors and other criminal justice officials is undertaken according to the rule of law and codes of conduct, and that such officials are held accountable for any infringement thereof through appropriate oversight and accountability mechanisms;
- (k) To ensure gender-equitable representation in the police force and other agencies of the justice system, particularly at the decision-making and managerial levels;
- (l) To provide victims of violence, where possible, with the right to speak to a female officer, whether it be the police or any other criminal justice official;
- (m) To develop new or improve existing model procedures and resource material, and then disseminate such procedures and material, to help criminal justice officials to identify, prevent and deal with violence against women, including by assisting and supporting women subjected to violence in a manner that is sensitive and responsive to their needs;
- (n) To provide adequate psychological support to police, prosecutors and other criminal justice officials to prevent their vicarious victimization.

V. Sentencing and corrections

17. Recognizing the serious nature of violence against women and the need for crime prevention and criminal justice responses that are commensurate with that severity, Member States are urged, as appropriate:

- (a) To review, evaluate and update sentencing policies and procedures in order to ensure that they:
 - (i) Hold offenders accountable for their acts related to violence against women;

- (ii) Denounce and deter violence against women;
- (iii) Stop violent behaviour;
- (iv) Promote victim and community safety, including by separating the offender from the victim and, if necessary, from society;
- (v) Take into account the impact on victims and their family members of sentences imposed on perpetrators;
- (vi) Provide sanctions that ensure that the perpetrators of violence against women are sentenced in a manner commensurate with the severity of the offence;
- (vii) Provide reparations for harm caused as a result of the violence;
- (viii) Promote the rehabilitation of the perpetrator, including by promoting a sense of responsibility in offenders and, where appropriate, reintegrating perpetrators into the community;
- (b) To ensure that their national laws take into account specific circumstances as aggravating factors for sentencing purposes, including, for example, repeated violent acts, abuse of a position of trust or authority, perpetration of violence against a spouse or a person in a close relationship with the perpetrator and perpetration of violence against a person under 18 years of age;
- (c) To ensure the right of a victim of violence to be notified of the offender's release from detention or imprisonment;
- (d) To take into account, in the sentencing process, the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements;
- (e) To make available to the courts, through legislation, a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence, and to rehabilitate the perpetrator, as appropriate;
- (f) To develop and evaluate treatment and reintegration/rehabilitation programmes for perpetrators of different types of violence against women that prioritize the safety of the victims;

- (g) To ensure that judicial and correctional authorities, as appropriate, monitor perpetrators' compliance with any treatment ordered;
- (h) To ensure that there are appropriate measures in place to eliminate violence against women who are detained for any reason;
- (i) To provide adequate protection to victims and witnesses of acts of violence before, during and after criminal proceedings.

VI. Victim support and assistance

18. Member States are urged, as appropriate and taking into account all relevant international legal instruments, in particular the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:

- (a) To make available to women who have been subjected to violence relevant information on rights, remedies and victim support services and on how to obtain them, in addition to information about their role and opportunities for participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings, as well as any orders against the offender;
- (b) To encourage and assist women subjected to violence in lodging and following through on formal complaints by providing protection to the victims and by advising them that the responsibility for pursuing charges and prosecuting offenders rests with the police and the prosecution service;
- (c) To take appropriate measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that victims are treated with dignity and respect, whether they participate in the criminal proceedings or not;
- (d) To ensure that women subjected to violence have access to prompt and fair redress for the harm that they have suffered as a result of violence, including the right to seek restitution from the offender or compensation from the State;

- (e) To provide court mechanisms and procedures that are accessible and sensitive to the needs of women subjected to violence and that ensure the fair and timely processing of cases;
- (f) To provide efficient and easily accessible procedures for issuing restraining or barring orders to protect women and other victims of violence and for ensuring that victims are not held accountable for breaches of such orders;
- (g) To recognize that children who have witnessed violence against their parent or someone else who is in a close relationship with them are victims of violence and need protection, care and support;
- (h) To ensure that women subjected to violence have full access to the civil and criminal justice systems, including access to free legal aid, where appropriate, court support and interpretation services;
- (i) To ensure that women subjected to violence have access to qualified personnel who can provide victim advocacy and support services throughout the entire criminal justice process, as well as access to any other independent support persons;
- (j) To ensure that all services and legal remedies available to victims of violence against women are also available to immigrant women, trafficked women, refugee women, stateless women and all other women in need of such assistance and that specialized services for such women are established, where appropriate;
- (k) To refrain from penalizing victims who have been trafficked for having entered the country illegally or for having been involved in unlawful activities that they were forced or compelled to carry out.

VII. Health and social services

19. Member States, in cooperation with the private sector, relevant nongovernmental organizations and professional associations, are urged, as appropriate:

- (a) To establish, fund and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation, health services, including counselling and psychological care, legal assistance and other basic needs for women and their children who are victims of violence or who are at risk of becoming victims of violence;
- (b) To establish, fund and coordinate services such as toll-free information lines, professional multidisciplinary counselling and crisis intervention services and support groups in order to benefit women who are victims of violence and their children;
- (c) To establish better linkages between health and social services, both public and private, particularly in emergency situations, and criminal justice agencies for the purposes of reporting, recording and responding appropriately to acts of violence against women, while protecting the privacy of women subjected to violence;
- (d) To design and sponsor sustainable programmes to prevent and treat alcohol and other substance abuse, given the frequent presence of substance abuse in incidents of violence against women;
- (e) To ensure that violent acts and sexual crimes against children are reported to the police and other law enforcement agencies when suspected by the health and social services;
- (f) To promote collaboration and coordination among relevant agencies and services, including through the establishment, where possible, of specialized units specially trained to deal with the complexities and victim sensitivities involved in cases of violence against women and where victims can receive comprehensive assistance, protection and intervention services, including health and social services, legal advice and police assistance;
- (g) To ensure that adequate medical, legal and social services sensitive to the needs of victims are in place to enhance the criminal justice management of cases involving violence against women and to encourage the development

of specialized health services, including comprehensive, free and confidential forensic examinations by trained health providers and appropriate treatment, including HIV-specific treatment.

VIII. Training

20. Member States, in cooperation with relevant non-governmental organizations and professional associations, are urged, as appropriate:

- (a) To provide for or to encourage mandatory cross-cultural, gender and child-sensitivity training modules for police, criminal justice officials and professionals involved in the criminal justice system on the unacceptability of all forms of violence against women and on their harmful impact and consequences on all those who experience such violence;
- (b) To make sure that police, criminal justice officials and other professionals involved in the criminal justice system receive adequate training and continued education on all relevant national laws, policies and programmes, as well as international legal instruments;
- (c) To ensure that police, criminal justice officials and other relevant authorities are adequately trained to be able to identify and respond appropriately to the specific needs of women victims of violence, including victims of trafficking in persons; to receive and treat all victims respectfully with a view to avoiding secondary victimization; to handle complaints confidentially; to conduct safety assessments and risk management; and to use and enforce protection orders;
- (d) To encourage relevant professional associations to develop enforceable standards of practice and behaviour and codes of conduct that promote justice and gender equality.

IX. Research and evaluation

21. Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network,

relevant entities of the United Nations system, other relevant international organizations, research institutes nongovernmental organizations and professional associations are urged, as appropriate:

- (a) To set up and strengthen mechanisms for systematic and coordinated data collection on violence against women;
- (b) To develop both modules and dedicated population-based surveys, including crime surveys, for assessing the nature and extent of violence against women;
- (c) To collect, analyse and publish data and information, including data and information disaggregated by gender, for use in carrying out needs assessments, taking decisions and developing policy in the field of crime prevention and criminal justice, in particular concerning:
 - (i) The different forms of violence against women; the causes, risk factors and levels of severity of such violence; and the consequences and impacts of such violence, including on different population subgroups;
 - (ii) The extent to which economic deprivation and exploitation are linked to violence against women;
 - (iii) The patterns, trends and indicators of violence against women, women's feelings of insecurity in the public and private spheres and factors that can reduce such feelings of insecurity;
 - (iv) The relationship between the victim and the offender;
 - (v) The effect of various types of intervention on the individual offender and on the reduction and elimination of violence against women as a whole;
 - (vi) The use of weapons and of drugs, alcohol and other substances in cases of violence against women;
 - (vii) The relationship between victimization or exposure to violence and subsequent violent activity;
 - (viii) The relationship between the violence experienced by women and women's vulnerability to other types of abuse;
 - (ix) The consequences of violence on those who witness it,

particularly within the family;

(d) To monitor, and publish annual reports on, the number of cases of violence against women reported to the police as well as other criminal justice agencies, including arrest and clearance rates, prosecution and case disposition of the offenders and the prevalence of violence against women; in doing so, use should be made of data derived from population-based surveys. Such report should disaggregate data by type of violence and include, for example, information on the sex of the perpetrator and his or her relationship to the victim;

(e) To evaluate the efficiency and effectiveness of the criminal justice system in meeting the needs of women subjected to violence, including with regard to the way in which the criminal justice system treats victims and witnesses of acts of violence, the use it makes of different intervention models and the degree to which it cooperates with providers of services to victims and witnesses, as well as to evaluate and assess the impact of current legislation, rules and procedures relating to violence against women;

(f) To evaluate the efficiency and effectiveness of offender treatment, rehabilitation and reintegration programmes, in consultation with relevant stakeholders, including victims and victim service providers;

(g) To be guided by existing ongoing efforts at the international level to develop a set of indicators to measure violence against women and to ensure a multisectoral, coordinated approach to the development, implementation, monitoring and evaluation of data collection initiatives;

(h) To ensure that data on violence against women are collected in a way that respects the confidentiality and human rights of women and in a way that does not jeopardize the safety of women;

(i) To encourage and provide sufficient financial support for research to be carried out on violence against women.

X. Crime prevention measures

22. Member States and the private sector, relevant non-governmental organizations and professional associations are urged, as appropriate:

- (a) To develop and implement relevant and effective public awareness and public education initiatives, as well as school programmes and curricula, that prevent violence against women by promoting respect for human rights, equality, cooperation, mutual respect and shared responsibilities between women and men;
- (b) To develop codes of conduct for personnel in public and private entities that prohibit violence against women, including sexual harassment, and include safe complaint and referral procedures;
- (c) To develop multidisciplinary and gender-sensitive approaches within public and private entities that seek to prevent violence against women, especially through partnerships between law enforcement officials and services specialized in the protection of women victims of violence;
- (d) To develop programmes to assess perceptions of public safety and to develop safety planning, environmental design and management of public space in order to reduce the risk of violence against women;
- (e) To set up outreach programmes and provide relevant information to women about gender roles, women's human rights and the social, health, legal and economic aspects of violence against women in order to empower women to protect themselves and their children against all forms of violence;
- (f) To set up outreach programmes for offenders or persons identified as potential offenders in order to promote non-violent behaviour and attitudes and respect for equality and the rights of women;
- (g) To develop and disseminate, in a manner appropriate to the audience concerned, including in educational institutions at all levels, information and awareness-raising materials on

the different forms of violence that are perpetrated against women and the availability of relevant programmes that include information on the relevant provisions of criminal law, the functions of the criminal justice system, the victim support mechanisms that are available and the existing programmes concerning non-violent behaviour and the peaceful resolution of conflicts;

(h) To support all initiatives, including those of non-governmental organizations and other relevant organizations seeking women's equality, to raise public awareness of the issue of violence against women and to contribute to the elimination of such violence;

(i) To facilitate the work at lower levels of government, including among city and local community authorities, to promote an integrated approach that makes use of the range of local services by institutions and civil society in developing preventive strategies and programmes.

23. Member States and the media, media associations, media self-regulatory bodies, schools and other relevant partners, while respecting the freedom of the media, are urged, as appropriate, to develop public awareness campaigns and appropriate measures and mechanisms, such as codes of ethics and self-regulatory measures on media violence, aimed at enhancing respect for the rights and dignity of women while discouraging both discrimination and gender stereotyping.

24. Member States and the private sector, relevant non-governmental organizations and professional associations are urged to develop and improve, where appropriate, crime prevention and criminal justice responses to the production, possession and dissemination of games, images and all other materials that depict or glorify acts of violence against women and children, and their impact on the general public's attitude towards women and children, as well as the mental and emotional development of children, particularly

through new information technologies, including the Internet.

XI. International cooperation

25. Member States, in cooperation with United Nations bodies and institutes and other relevant organizations, are urged, as appropriate:

- (a) To continue exchanging information concerning successful intervention models and preventive programmes in eliminating all forms of violence against women and to update the resource manual and the compendium on the Model Strategies and Practical Measures, as well as provide information for inclusion in the Secretary-General's database on violence against women;
- (b) To cooperate and collaborate at the bilateral, regional and international levels with relevant entities to prevent violence against women; to provide safety, assistance and protection for the victims and witnesses of violence and their family members, as appropriate; and to promote measures to effectively bring perpetrators to justice, through strengthened mechanisms of international cooperation and mutual legal assistance;
- (c) To develop provisions providing for the safe and, to the extent possible, voluntary repatriation and reintegration of women victims of violence who have been trafficked or kidnapped across borders;
- (d) To contribute and provide support to the United Nations system in its efforts to eliminate all forms of violence against women;
- (e) To take appropriate preventive action and to ensure full accountability in cases of sexual exploitation and abuse involving troops and police in United Nations peacekeeping operations.

26. Member States are also urged:

- (a) To condemn all acts of violence against women in

situations of armed conflict, to recognize them as violations of international human rights, humanitarian law and international criminal law, to call for a particularly effective response to such violations, in particular when they involve murder, systematic rape, sexual slavery and forced pregnancy, and to implement Security Council resolutions 1325 (2000) and 1820 (2008) on women and peace and security;

(b) To work actively towards universal ratification of or accession to all relevant treaties and to promote their full implementation, including the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Rome Statute of the International Criminal Court, the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(c) To formulate any reservations to the Convention on the Elimination of All Forms of Discrimination against Women in a manner that is as precise and as narrow as possible and to ensure that any such reservations are not incompatible with the object and purpose of that convention;

(d) To work actively towards the ratification of or accession to existing regional instruments and agreements aimed at combating violence against women, and to promote their implementation;

(e) To include in periodic reports to the Committee on the Elimination of Discrimination against Women information on efforts made to implement the Updated Model Strategies and Practical Measures;

(f) To cooperate with the International Criminal Court, ad hoc international criminal tribunals and other international criminal tribunals in the investigation and prosecution of the perpetrators of genocide, crimes against humanity and war crimes, particularly of those crimes involving gender-based

violence, and to enable women who have been subjected to violence to give testimony and participate in all stages of the proceedings while protecting the safety, interests, identity and privacy of those women;

(g) To cooperate with and assist the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on trafficking in persons, especially in women and children, in performing their mandated tasks and duties by supplying all information requested and responding to the Special Rapporteurs' visits and communications.

XII. Follow-up activities

27. Member States, United Nations bodies, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, other relevant international and regional organizations, research institutes, nongovernmental organizations and professional organizations, including organizations seeking women's equality, are urged, as appropriate:

(a) To encourage the translation of the updated Model Strategies and Practical Measures into local languages and to ensure their wide dissemination and use in training and education programmes;

(b) To draw, as appropriate, on the updated Model Strategies and Practical Measures in the development of legislation, procedures, policies and practices in responding to violence against women;

(c) To assist States, upon request, in developing strategies and programmes to prevent violence against women and in reviewing and evaluating their criminal justice systems, including their criminal legislation, on the basis of the updated Model Strategies and Practical Measures;

(d) To support the technical cooperation activities of the institutes of the United Nations Crime Prevention and Criminal Justice Programme network aimed at eliminating

all forms of violence against women;

(e) To develop coordinated national, regional and subregional plans and programmes to implement the updated Model Strategies and Practical Measures;

(f) To design standard training programmes and manuals for police and criminal justice officials based on the updated Model Strategies and Practical Measures;

(g) To periodically monitor and review progress made at the national and international levels in terms of plans, programmes and initiatives to eliminate all forms of violence against women;

(h) To periodically review and update, if necessary, the updated Model Strategies and Practical Measures.

**(7) Inter-American Convention on the Prevention,
Punishment and Eradication of Violence against Women
"Convention of Belém do Pará" [19 June 1994]**

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING that full respect for human rights has been enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and reaffirmed in other international and regional instruments;

AFFIRMING that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms;

CONCERNED that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men;

RECALLING the Declaration on the Elimination of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women, and affirming that violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations:

CONVINCED that the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life; and

CONVINCED that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them,

HAVE AGREED to the following:

**CHAPTER I
DEFINITION AND SCOPE OF APPLICATION**

Article 1

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2

Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

CHAPTER II

RIGHTS PROTECTED

Article 3

Every woman has the right to be free from violence in both the public and private spheres.

Article 4

Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The rights to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;
- h. The right to associate freely;
- i. The right of freedom to profess her religion and beliefs within the law; and
- j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

Article 5

Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.

Article 6

The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination;
and
- b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

CHAPTER III DUTIES OF THE STATES

Article 7

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

Article 8

The States Parties agree to undertake progressively specific measures, including programs:

- a. to promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected;
- b. to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;
- c. to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women;
- d. to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children;
- e. to promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women;

- f. to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;
- g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women;
- h. to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes; and
- i. to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.

Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.

CHAPTER IV INTER-AMERICAN MECHANISMS OF PROTECTION

Article 10

In order to protect the rights of every woman to be free from violence, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.

Article 11

The States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention.

Article 12

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

CHAPTER V
GENERAL PROVISIONS

Article 13

No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees of the rights of women and appropriate safeguards to prevent and eradicate violence against women.

Article 14

No part of this Convention shall be understood to restrict or limit the American Convention on Human Rights or any other international convention on the subject that provides for equal or greater protection in this area.

Article 15

This Convention is open to signature by all the member states of the Organization of American States.

Article 16

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 17

This Convention is open to accession by any other state. Instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 18

Any State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are:

- a. not incompatible with the object and purpose of the Convention, and
- b. not of a general nature and relate to one or more specific provisions.

Article 19

Any State Party may submit to the General Assembly, through the Inter-American Commission of Women, proposals for the amendment of this Convention.

Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 20

If a State Party has two or more territorial units in which the matters dealt with in this Convention are governed by different systems of law, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such a declaration may be amended at any time by subsequent declarations, which shall expressly specify the territorial unit or units to which this Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall enter into force thirty days after the date of their receipt.

Article 21

This Convention shall enter into force on the thirtieth day after the date of deposit of the second instrument of ratification. For each State that ratifies or accedes to the Convention after the second instrument of ratification is deposited, it shall enter into force thirty days after the date on which that State deposited its instrument of ratification or accession.

Article 22

The Secretary General shall inform all member states of the Organization of American States of the entry into force of this Convention.

Article 23

The Secretary General of the Organization of American States shall present an annual report to the member states of the Organization on the status of this Convention, including the signatures, deposits of instruments of ratification and accession, and declarations, and any reservations that may have been presented by the States Parties, accompanied by a report thereon if needed.

Article 24

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it by depositing an instrument to that effect with the General Secretariat of the Organization of American States. One year after the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.

Article 25

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication in accordance with the provisions of Article 102 of the United Nations Charter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention, which shall be called the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará."

DONE IN THE CITY OF BELEM DO PARA, BRAZIL, the ninth of June in the year one thousand nine hundred ninety-four.

(8) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence “Istanbul Convention” [11 May 2011]

Preamble

The member States of the Council of Europe and the other signatories hereto,
Recalling the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007);

Recalling the following recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence, Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms, Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, and other relevant recommendations;

Taking account of the growing body of case law of the European Court of Human Rights which sets important standards in the field of violence against women;

Having regard to the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”, 1979) and its Optional Protocol (1999) as well as General Recommendation No. 19 of the CEDAW Committee on violence against women, the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000) and the United Nations Convention on the Rights of Persons with Disabilities (2006);

Having regard to the Rome Statute of the International Criminal Court (2002);

Recalling the basic principles of international humanitarian law, and especially the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) and the Additional Protocols I and II (1977) thereto;

Condemning all forms of violence against women and domestic violence;

Recognising that the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women;

Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;

Recognising, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honour” and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men;

Recognising the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;

Recognising that women and girls are exposed to a higher risk of gender-based violence than men;

Recognising that domestic violence affects women disproportionately, and that men may also be victims of domestic violence;

Recognising that children are victims of domestic violence, including as witnesses of violence in the family;

Aspiring to create a Europe free from violence against women and domestic violence,

Have agreed as follows:

Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

Article 1 – Purposes of the Convention

- 1 The purposes of this Convention are to:
 - a protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
 - b contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
 - c design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
 - d promote international co-operation with a view to eliminating violence against women and domestic violence;
 - e provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.
- 2 In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.

Article 2 – Scope of the Convention

- 1 This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.
- 2 Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.

- 3 This Convention shall apply in times of peace and in situations of armed conflict.

Article 3 – Definitions

For the purpose of this Convention:

- a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- b “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;
- c “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;
- d “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;
- e “victim” shall mean any natural person who is subject to the conduct specified in points a and b;
- f “women” includes girls under the age of 18.

Article 4 – Fundamental rights, equality and non-discrimination

- 1 Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.
- 2 Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:
 - embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
 - prohibiting discrimination against women, including through the use of sanctions, where appropriate;
 - abolishing laws and practices which discriminate against women.
- 3 The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.
- 4 Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

Article 5 – State obligations and due diligence

- 1 Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.
- 2 Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

Article 6 – Gender-sensitive policies

Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.

Chapter II – Integrated policies and data collection

Article 7 – Comprehensive and co-ordinated policies

- 1 Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.
- 2 Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.
- 3 Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

Article 8 – Financial resources

Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.

Article 9 – Non-governmental organisations and civil society

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

Article 10 – Co-ordinating body

- 1 Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.
- 2 Parties shall ensure that the bodies designated or established pursuant to this article receive information of a general nature on measures taken pursuant to Chapter VIII.
- 3 Parties shall ensure that the bodies designated or established pursuant to this article shall have the capacity to communicate directly and foster relations with their counterparts in other Parties.

Article 11 – Data collection and research

- 1 For the purpose of the implementation of this Convention, Parties shall undertake to:
 - a collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;
 - b support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.
- 2 Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.

- 3 Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.
- 4 Parties shall ensure that the information collected pursuant to this article is available to the public.

Chapter III – Prevention

Article 12 – General obligations

- 1 Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.
- 2 Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.
- 3 Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.
- 4 Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.
- 5 Parties shall ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of this Convention.
- 6 Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.

Article 13 – Awareness-raising

- 1 Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights

institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.

- 2 Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.

Article 14 – Education

- 1 Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.
- 2 Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.

Article 15 – Training of professionals

- 1 Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.
- 2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

Article 16 – Preventive intervention and treatment programmes

- 1 Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.
- 2 Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.
- 3 In taking the measures referred to in paragraphs 1 and 2, Parties shall ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.

Article 17 – Participation of the private sector and the media

- 1 Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.
- 2 Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.

Chapter IV – Protection and support

Article 18 – General obligations

- 1 Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.
- 2 Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to 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, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.

- 3 Parties shall ensure that measures taken pursuant to this chapter shall:
 - be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
 - be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;
 - aim at avoiding secondary victimisation;
 - aim at the empowerment and economic independence of women victims of violence;
 - allow, where appropriate, for a range of protection and support services to be located on the same premises;
 - address the specific needs of vulnerable persons, including child victims, and be made available to them.
- 4 The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.
- 5 Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.

Article 19 – Information

Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.

Article 20 – General support services

- 1 Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.
- 2 Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.

Article 21 – Assistance in individual/collective complaints

Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.

Article 22 – Specialist support services

- 1 Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.
- 2 Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.

Article 23 – Shelters

Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.

Article 24 – Telephone helplines

Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention.

Article 25 – Support for victims of sexual violence

Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.

Article 26 – Protection and support for child witnesses

- 1 Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.
- 2 Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.

Article 27 – Reporting

Parties shall take the necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organisations or authorities.

Article 28 – Reporting by professionals

Parties shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence

covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.

Chapter V – Substantive law

Article 29 – Civil lawsuits and remedies

- 1 Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.
- 2 Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

Article 30 – Compensation

- 1 Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.
- 2 Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.
- 3 Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.

Article 31 – Custody, visitation rights and safety

- 1 Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.
- 2 Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

Article 32 – Civil consequences of forced marriages

Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.

Article 33 – Psychological violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

Article 34 – Stalking

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

Article 35 – Physical violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.

Article 36 – Sexual violence, including rape

- 1 Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
 - a engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
 - b engaging in other non-consensual acts of a sexual nature with a person;
 - c causing another person to engage in non-consensual acts of a sexual nature with a third person.
- 2 Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.
- 3 Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.

Article 37 – Forced marriage

- 1 Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.
- 2 Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

Article 38 – Female genital mutilation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- b coercing or procuring a woman to undergo any of the acts listed in point a;

- c inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

Article 39 – Forced abortion and forced sterilisation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a performing an abortion on a woman without her prior and informed consent;
- b performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.

Article 40 – Sexual harassment

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

Article 41 – Aiding or abetting and attempt

- 1 Parties shall take the necessary legislative or other measures to establish as an offence, when committed intentionally, aiding or abetting the commission of the offences established in accordance with Articles 33, 34, 35, 36, 37, 38.a and 39 of this Convention.
- 2 Parties shall take the necessary legislative or other measures to establish as offences, when committed intentionally, attempts to commit the offences established in accordance with Articles 35, 36, 37, 38.a and 39 of this Convention.

Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”

- 1 Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered

by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

- 2 Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

Article 43 – Application of criminal offences

The offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.

Article 44 – Jurisdiction

- 1 Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
 - a in their territory; or
 - b on board a ship flying their flag; or
 - c on board an aircraft registered under their laws; or
 - d by one of their nationals; or
 - e by a person who has her or his habitual residence in their territory.
- 2 Parties shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed against one of their nationals or a person who has her or his habitual residence in their territory.
- 3 For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed.
- 4 For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures

to ensure that their jurisdiction as regards points d and e of paragraph 1 is not subordinated to the condition that the prosecution can only be initiated following the reporting by the victim of the offence or the laying of information by the State of the place where the offence was committed.

- 5 Parties shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged perpetrator is present on their territory and they do not extradite her or him to another Party, solely on the basis of her or his nationality.
- 6 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.
- 7 Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Article 45 – Sanctions and measures

- 1 Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.
- 2 Parties may adopt other measures in relation to perpetrators, such as:
 - monitoring or supervision of convicted persons;
 - withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

Article 46 – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken

into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- a the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- b the offence, or related offences, were committed repeatedly;
- c the offence was committed against a person made vulnerable by particular circumstances;
- d the offence was committed against or in the presence of a child;
- e the offence was committed by two or more people acting together;
- f the offence was preceded or accompanied by extreme levels of violence;
- g the offence was committed with the use or threat of a weapon;
- h the offence resulted in severe physical or psychological harm for the victim;
- i the perpetrator had previously been convicted of offences of a similar nature.

Article 47 – Sentences passed by another Party

Parties shall take the necessary legislative or other measures to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sentence.

Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing

- 1 Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.

- 2 Parties shall take the necessary legislative or other measures to ensure that if the payment of a fine is ordered, due account shall be taken of the ability of the perpetrator to assume his or her financial obligations towards the victim.

Chapter VI – Investigation, prosecution, procedural law and protective measures

Article 49 – General obligations

- 1 Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.
- 2 Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.

Article 50 – Immediate response, prevention and protection

- 1 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.
- 2 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

Article 51 – Risk assessment and risk management

- 1 Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.

- 2 Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

Article 52 – Emergency barring orders

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

Article 53 – Restraining or protection orders

- 1 Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.
- 2 Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:
 - 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.
- 3 Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

Article 54 – Investigations and evidence

Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary.

Article 55 – *Ex parte* and *ex officio* proceedings

- 1 Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.
- 2 Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and non-governmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

Article 56 – Measures of protection

- 1 Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:
 - a providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;
 - b ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;
 - c informing them, under the conditions provided for by internal law, of their rights and the 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 their case;

- d enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
 - e providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;
 - f ensuring that measures may be adopted to protect the privacy and the image of the victim;
 - g ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
 - h providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
 - i enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.
- 2 A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

Article 57 – Legal aid

Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.

Article 58 – Statute of limitation

Parties shall take the necessary legislative and other measures to ensure that the statute of limitation for initiating any legal proceedings with regard to the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, shall continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.

Chapter VII – Migration and asylum

Article 59 – Residence status

- 1 Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
- 2 Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
- 3 Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
 - a where the competent authority considers that their stay is necessary owing to their personal situation;
 - b where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
- 4 Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

Article 60 – Gender-based asylum claims

- 1 Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.

- 2 Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
- 3 Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

Article 61 – Non-refoulement

- 1 Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
- 2 Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

Chapter VIII – International co-operation

Article 62 – General principles

- 1 Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:
 - a preventing, combating and prosecuting all forms of violence covered by the scope of this Convention;
 - b protecting and providing assistance to victims;

- c investigations or proceedings concerning the offences established in accordance with this Convention;
 - d enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties, including protection orders.
- 2 Parties shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention and committed in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.
- 3 If a Party that makes mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by another Party to this Convention conditional on the existence of a treaty receives a request for such legal co-operation from a Party with which it has not concluded such a treaty, it may consider this Convention to be the legal basis for mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by the other Party in respect of the offences established in accordance with this Convention.
- 4 Parties shall endeavour to integrate, where appropriate, the prevention and the fight against violence against women and domestic violence in assistance programmes for development provided for the benefit of third States, including by entering into bilateral and multilateral agreements with third States with a view to facilitating the protection of victims in accordance with Article 18, paragraph 5.

Article 63 – Measures relating to persons at risk

When a Party, on the basis of the information at its disposal, has reasonable grounds to believe that a person is at immediate risk of being subjected to any of the acts of violence referred to in Articles 36, 37, 38 and 39 of this Convention on the territory of another Party, the Party that has the information is encouraged to transmit it without delay to the latter for the purpose of ensuring that appropriate protection measures are taken. Where applicable, this information shall include details on existing protection provisions for the benefit of the person at risk.

Article 64 – Information

- 1 The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.
- 2 A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in preventing criminal offences established in accordance with this Convention or in initiating or carrying out investigations or proceedings concerning such criminal offences or that it might lead to a request for co-operation by that Party under this chapter.
- 3 A Party receiving any information in accordance with paragraph 2 shall submit such information to its competent authorities in order that proceedings may be taken if they are considered appropriate, or that this information may be taken into account in relevant civil and criminal proceedings.

Article 65 – Data Protection

Personal data shall be stored and used pursuant to the obligations undertaken by the Parties under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

Chapter IX – Monitoring mechanism

Article 66 – Group of experts on action against violence against women and domestic violence

- 1 The Group of experts on action against violence against women and domestic violence (hereinafter referred to as “GREVIO”) shall monitor the implementation of this Convention by the Parties.
- 2 GREVIO shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as

multidisciplinary expertise. Its members shall be elected by the Committee of the Parties from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.

- 3 The initial election of 10 members shall be held within a period of one year following the entry into force of this Convention. The election of five additional members shall be held following the 25th ratification or accession.
- 4 The election of the members of GREVIO shall be based on the following principles:
 - a they shall be chosen according to a transparent procedure from among persons of high moral character, known for their recognised competence in the fields of human rights, gender equality, violence against women and domestic violence, or assistance to and protection of victims, or having demonstrated professional experience in the areas covered by this Convention;
 - b no two members of GREVIO may be nationals of the same State;
 - c they should represent the main legal systems;
 - d they should represent relevant actors and agencies in the field of violence against women and domestic violence;
 - e they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions, and shall be available to carry out their duties in an effective manner.
- 5 The election procedure of the members of GREVIO shall be determined by the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.
- 6 GREVIO shall adopt its own rules of procedure.
- 7 Members of GREVIO, and other members of delegations carrying out the country visits as set forth in Article 68, paragraphs 9 and 14, shall enjoy the privileges and immunities established in the appendix to this Convention.

Article 67 – Committee of the Parties

- 1 The Committee of the Parties shall be composed of the representatives of the Parties to the Convention.
- 2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GREVIO. It shall subsequently meet whenever one third of the Parties, the President of the Committee of the Parties or the Secretary General so requests.
- 3 The Committee of the Parties shall adopt its own rules of procedure.

Article 68 – Procedure

- 1 Parties shall submit to the Secretary General of the Council of Europe, based on a questionnaire prepared by GREVIO, a report on legislative and other measures giving effect to the provisions of this Convention, for consideration by GREVIO.
- 2 GREVIO shall consider the report submitted in accordance with paragraph 1 with the representatives of the Party concerned.
- 3 Subsequent evaluation procedures shall be divided into rounds, the length of which is determined by GREVIO. At the beginning of each round GREVIO shall select the specific provisions on which the evaluation procedure shall be based and send out a questionnaire.
- 4 GREVIO shall define the appropriate means to carry out this monitoring procedure. It may in particular adopt a questionnaire for each evaluation round, which shall serve as a basis for the evaluation procedure of the implementation by the Parties. This questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GREVIO.
- 5 GREVIO may receive information on the implementation of the Convention from non-governmental organisations and civil society, as well as from national institutions for the protection of human rights.

- 6 GREVIO shall take due consideration of the existing information available from other regional and international instruments and bodies in areas falling within the scope of this Convention.
- 7 When adopting a questionnaire for each evaluation round, GREVIO shall take due consideration of the existing data collection and research in the Parties as referred to in Article 11 of this Convention.
- 8 GREVIO may receive information on the implementation of the Convention from the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly and relevant specialised bodies of the Council of Europe, as well as those established under other international instruments. Complaints presented to these bodies and their outcome will be made available to GREVIO.
- 9 GREVIO may subsidiarily organise, in co-operation with the national authorities and with the assistance of independent national experts, country visits, if the information gained is insufficient or in cases provided for in paragraph 14. During these visits, GREVIO may be assisted by specialists in specific fields.
- 10 GREVIO shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments shall be taken into account by GREVIO when adopting its report.
- 11 On the basis of all the information received and the comments by the Parties, GREVIO shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of this Convention. This report and the conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GREVIO shall be made public as from their adoption, together with eventual comments by the Party concerned.

- 12 Without prejudice to the procedure of paragraphs 1 to 8, the Committee of the Parties may adopt, on the basis of the report and conclusions of GREVIO, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GREVIO, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of this Convention.
- 13 If GREVIO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention, it may request the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of violence against women.
- 14 Taking into account the information submitted by the Party concerned, as well as any other reliable information available to it, GREVIO may designate one or more of its members to conduct an inquiry and to report urgently to GREVIO. Where warranted and with the consent of the Party, the inquiry may include a visit to its territory.
- 15 After examining the findings of the inquiry referred to in paragraph 14, GREVIO shall transmit these findings to the Party concerned and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations.

Article 69 – General recommendations

GREVIO may adopt, where appropriate, general recommendations on the implementation of this Convention.

Article 70 – Parliamentary involvement in monitoring

- 1 National parliaments shall be invited to participate in the monitoring of the measures taken for the implementation of this Convention.
- 2 Parties shall submit the reports of GREVIO to their national parliaments.
- 3 The Parliamentary Assembly of the Council of Europe shall be invited to regularly take stock of the implementation of this Convention.

Chapter X – Relationship with other international instruments

Article 71 – Relationship with other international instruments

- 1 This Convention shall not affect obligations arising from other international instruments to which Parties to this Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.
- 2 The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Chapter XI – Amendments to the Convention

Article 72 – Amendments

- 1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by her or him to the member States of the Council of Europe, any signatory, any Party, the European Union, any State invited to sign this Convention in accordance with the provisions of Article 75, and any State invited to accede to this Convention in accordance with the provisions of Article 76.
- 2 The Committee of Ministers of the Council of Europe shall consider the proposed amendment and, after having consulted the Parties to this Convention that are not members of the Council of Europe, may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.
- 3 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 2 shall be forwarded to the Parties for acceptance.
- 4 Any amendment adopted in accordance with paragraph 2 shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General of their acceptance.

Chapter XII – Final clauses

Article 73 – Effects of this Convention

The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating violence against women and domestic violence.

Article 74 – Dispute settlement

- 1 The Parties to any dispute which may arise concerning the application or interpretation of the provisions of this Convention shall first seek to resolve it by means of negotiation, conciliation, arbitration or by any other methods of peaceful settlement accepted by mutual agreement between them.
- 2 The Committee of Ministers of the Council of Europe may establish procedures of settlement to be available for use by the Parties in dispute if they should so agree.

Article 75 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories, including at least eight member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.
- 4 In respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention shall enter into

force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 76 – Accession to the Convention

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 77 – Territorial application

- 1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 78 – Reservations

- 1 No reservation may be made in respect of any provision of this Convention, with the exceptions provided for in paragraphs 2 and 3.
- 2 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in:
 - Article 30, paragraph 2;
 - Article 44, paragraphs 1.e, 3 and 4;
 - Article 55, paragraph 1 in respect of Article 35 regarding minor offences;
 - Article 58 in respect of Articles 37, 38 and 39;
 - Article 59.
- 3 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles 33 and 34.
- 4 Any Party may wholly or partly withdraw a reservation by means of a declaration addressed to the Secretary General of the Council of Europe. This declaration shall become effective as from its date of receipt by the Secretary General.

Article 79 – Validity and review of reservations

- 1 Reservations referred to in Article 78, paragraphs 2 and 3, shall be valid for a period of five years from the day of the entry into force of this Convention in respect of the Party concerned. However, such reservations may be renewed for periods of the same duration.

- 2 Eighteen months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Party concerned. No later than three months before the expiry, the Party shall notify the Secretary General that it is upholding, amending or withdrawing its reservation. In the absence of a notification by the Party concerned, the Secretariat General shall inform that Party that its reservation is considered to have been extended automatically for a period of six months. Failure by the Party concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.
- 4 If a Party makes a reservation in conformity with Article 78, paragraphs 2 and 3, it shall provide, before its renewal or upon request, an explanation to GREVIO, on the grounds justifying its continuance.

Article 80 – Denunciation

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 81 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, any signatory, any Party, the European Union, and any State invited to accede to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 75 and 76;
- d any amendment adopted in accordance with Article 72 and the date on which such an amendment enters into force;

- e any reservation and withdrawal of reservation made in pursuance of Article 78;
- f any denunciation made in pursuance of the provisions of Article 80;
- g any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Istanbul, this 11th day of May 2011, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Union and to any State invited to accede to this Convention.

(9) Council of Europe Parliamentary Assembly Recommendation 1582 (2002) Domestic Violence against Women

1. Domestic violence is the most common form of violence against women and its consequences affect many areas of the lives of victims — housing, health, education and the freedom to live their lives without fear and in the way they wish. This widespread phenomenon is common to all European countries and is not limited to any particular social group or class. Domestic violence can take a number of forms such as physical assault, sexual abuse and rape, threats and intimidation and should be recognised as a crime.

2. However, violence committed within the family is still considered to be a private matter. Statistics shows that for women between 16 and 44 years of age, domestic violence is thought to be the major cause of death and invalidity, ahead of cancer, road accidents and even war. Therefore, domestic violence should be treated as a political and public problem, and a violation of human rights.

3. The Parliamentary Assembly recalls the final declaration adopted at the 2nd Summit of the Council of Europe, Strasbourg, 1997, Assembly Recommendation [1450](#) (2000) on violence against women in Europe and Committee of Ministers Recommendation Rec(2002)5 to member states on the protection of women against violence, in which all forms of such violence have been condemned as being a general violation of their rights as human beings.

4. The Assembly considers acts of domestic violence to be criminal acts and calls on the member states to recognise that they have an obligation to prevent, investigate and punish all acts of domestic violence and to provide protection to its victims.

5. Taking into account the hidden nature of domestic violence, the Assembly urges governments to introduce effective awareness-raising policies and campaigns to inform and educate citizens on this problem. Each government should obtain objective information and data on the dimension of these crimes.

6. The Assembly recognises the importance of the development of community intervention strategies at local levels, aimed at the co-ordination of inter-agency co-operation and the mobilisation of financial and human resources in the fight against domestic violence, calling on people to take more responsibility with a view to changing attitudes in the places where they live and work.

7. Therefore the Assembly calls on the member states of the Council of Europe:

Measures to be taken regarding victims of domestic violence

- i. to provide victims of domestic violence with free legal advice and assistance before taking legal action;
- ii. to help victims of domestic violence by opening residential centres where women can receive psychological support and by giving financial support to welfare associations and emergency services;
- iii. to ensure effective protection for victims of violence after the incident and during the whole legal procedure;
- iv. to give special financial support to non-governmental organisations as well as to women's associations working with victims of domestic violence;
- v. to adopt or reinforce social protection measures so that injuries caused to women and children by violent acts are provided for under social protection schemes;
- vi. to promote the training of professionals working with young people, as well as health personnel, to identify children and adolescents growing up in violent homes and to take the necessary measures to assist them;
- vii. to ensure the training of medical personnel to enable them to identify victims of violence;
- viii. to grant immigrant women who have been or who are victims of domestic violence an independent right of residence.

Measures to be taken regarding the prevention of domestic violence

- i. to improve statistics on domestic violence, and with this in mind to develop a clear picture of its nature and prevalence, to permit the identification of resources earmarked for this problem and the evaluation of initiatives to tackle it;
- ii. to develop a partnership between the authorities responsible for the protection of women's rights and regional and local authorities in order to increase the number of rehabilitation centres and shelters for women victims of domestic violence;
- iii. to promote continuing co-operation and understanding between the police, government departments and non-governmental organisations in the fight against the problems and dangers associated with domestic violence;
- iv. to develop action plans in co-operation with women's non-governmental organisations in order to create a general climate where domestic violence is rejected;
- v. to launch, through the media, national awareness campaigns against domestic violence;
- vi. to organise adequate training for people who deal with victims of domestic violence: health care staff, police and social workers;

- vii. to start education on gender equality and non-violent behaviour at a very early stage and to ensure adequate training for teachers on the issue of domestic violence and gender equality;
- viii. to encourage citizens, through educational programmes, to accept their responsibilities, and take positive steps to reduce and prevent domestic violence in society;
- ix. to increase state funding to support the social services dealing with the problem of domestic violence;
- x. to encourage the media to cover in a regular, objective and non-biased manner the problem of domestic violence; the mass media should also try to educate the public about the causes and consequences of this kind of violence;
- xi. to encourage women to learn self-defence techniques;
- xii. to elaborate training programmes specifically for the perpetrators of acts of violence against women;
- xiii. to develop special information programmes for men with the aim of preventing acts of domestic violence.

Legal measures to be taken

- i. national legislation should prohibit all forms of domestic violence and introduce effective legal provisions, including the immediate removal of the violent partner from the common household and the environment of the woman and her children, without prior evidence of violence, and on the first complaint without waiting for the court order;
- ii. the concept of domestic violence should be defined in national legislation in such a way that it is treated as a serious criminal offence, whatever its form;
- iii. in view of the legal and institutional reform aimed at establishing more effective systems for protecting women against domestic violence, a review of existing national laws and comprehensive research are necessary;
- iv. conjugal rape should be made a criminal offence;
- v. access to justice and the different procedures should be more flexible: hearings should preferably be held in private, there should be a reduced burden of proof, and so on;
- vi. the police and law enforcement agencies should be granted the authority to carry out investigations and obtain evidence, and to lodge complaints on behalf of victims of domestic violence.

8. The Assembly invites the Committee of Ministers to launch a European year against domestic violence, which would highlight this problem at European level and encourage European governments to undertake concrete action to combat domestic violence.

(10) SADC Prevention and Eradication of Violence against Women and Children (Addendum to the 1997 SADC Declaration on Gender and Development) [14 September 1998]

RECALLING THAT :

1. We signed the SADC Declaration on Gender and Development at our Summit in Blantyre, Malawi on 8 September 1997, committing ourselves and our respective countries to take 'urgent measures to prevent and deal with the increasing levels of violence against women and children'.
2. In furtherance of this commitment, SADC Ministers of Justice, Gender/Women's Affairs, Legislators, Government Officials and Representatives of Non-Governmental Organisations convened a SADC Conference on the Prevention of Violence Against Women in Durban, South Africa, on 5 to 8 March 1998, which recommended the adoption of certain measures:

REAFFIRMING our commitment to the prevention and eradication of violence against women and children in our region;

RECOGNISING THAT VIOLENCE AGAINST WOMEN AND CHILDREN :

3. Reflects the unequal relations of power between women and men, resulting in the domination and discrimination of women by men;
4. Is acknowledged by the Vienna Declaration and Programme of Action of 1993 as a serious violation of fundamental human rights;
5. Includes physical and sexual violence, as well as economic, psychological and emotional abuse;
 1. occurring in the family, in such forms as threats, intimidation, battery, sexual abuse of children, economic deprivation, marital rape, femicide, female genital mutilation, and traditional practices harmful to women;
 2. occurring in the community, in such forms as threats, rape, sexual abuse, sexual harassment and intimidation, trafficking in women and

- children, forced prostitution, violence against women in armed conflict; and that
3. perpetrated or condoned by the agents of the state;

DEEPLY CONCERNED THAT:

6. The levels of cases of the various forms of violence against women and children continue to increase;
7. Existing measures to protect women and children against violence have proved inadequate, ineffective and biased against the victims.

WE STRONGLY CONDEMN violence against women and children in all its forms, and resolve that the following measures be adopted:

Legal

8. Enacting laws such as sexual offences and domestic violence legislation making various forms of violence against women clearly defined crimes, and taking appropriate measures to impose penalties, punishment and other enforcement mechanisms for the prevention and eradication of violence against women and children;
9. Adopting legislative measures to ensure the protection and removal of all forms of discrimination against, and empowerment of women with disabilities, the girl-child, the aged, women in armed conflict and other women whose circumstances make them especially vulnerable to violence;
10. Reviewing and reforming the criminal laws and procedures applicable to cases of sexual offences, to eliminate gender bias and ensure justice and fairness to both the victim and accused;
11. Introducing, as a matter of priority, legal and administrative mechanisms for women and children subjected to violence, effective access to counselling, restitution, reparation and other just forms of dispute resolution;
12. Adopting such other legislative and administrative measures as may be necessary to ensure the prevention and eradication of all forms of violence against women and children;

Social, Economic, Cultural and Political

13. Promoting the eradication of elements in traditional norms and religious beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women and children;

14. Introducing and supporting gender sensitisation and public awareness programmes aimed at eradicating violence against women and children;
15. Encouraging the media to play a constructive role in the eradication of violence against women and children by adopting guidelines which ensure sensitive coverage of the issue and avoid the perpetuation of stereotypes;

Services

16. Providing easily accessible information on services available to women and children victims/survivors of violence, including women and children with disabilities;
17. Ensuring accessible, effective and responsive police, prosecutorial, health, social welfare and other services, and establishing specialised units to redress cases of violence against women and children;
18. Providing accessible, affordable and specialised legal services, including legal aid, to ensure the just and speedy resolution of matters regarding violence against women and children;
19. Providing easily accessible, affordable and, where possible, free social, and administrative services for the empowerment of women and children victims/survivors of violence;

Education, Training and Awareness Building

20. Introducing and promoting gender sensitisation and training of all service providers engaged in the administration of justice, such as judicial officers, prosecutors, police, prison, welfare and health officials;
21. Undertaking and sharing research of the gathering of statistics and other information on the causes, prevalence and consequences of violence against women and children;
22. Encouraging the exchange of national, regional and international best practices for the eradication of violence against women and children;

Integrated Approaches

23. Ensuring that all these measures are implemented in an integrated manner by all stakeholders;

Budgetary Allocations

24. Allocating the necessary resources to ensure the implementation and sustainability of the above programmes;

WE FURTHER RESOLVE THAT :

25. Regional policies, programmes and mechanisms to enhance the security and empowerment of women and children, be adopted and their implementation monitored;
26. Urgent consideration be given to the adoption of legally binding SADC Instruments on Preventing Violence Against Women and Children, and to ensure that these commitments are translated into tangible actions;
27. SADC convene a Regional Conference, before the end of the Year 2000, to review progress made in the implementation of the above measures and recommendations.
28. This addendum is an integral part of the 1997 SADC Declaration on Gender in Development.

IN WITNESS WHEREOF, WE, the Heads of State or Government, or duly authorised Representatives of SADC Member States, have signed this Addendum.

DONE at Grand Baie this 14th day of September 1998 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.

(11) CARICOM Model Legislation on Domestic Violence [2011]

THE FAMILY (PROTECTION AGAINST DOMESTIC VIOLENCE) ACT

ARRANGEMENT OF SECTIONS

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MODEL LEGISLATION ON DOMESTIC VIOLENCE

AN ACT to provide protection in cases involving domestic violence and for matters connected therewith.

BE IT ENACTED etc.

Short title

1. This Act may be cited as the Family (Protection against Domestic Violence) Act.

PRELIMINARY

Interpretation

2. In this Act -

"*applicant*" means any person who applies or on whose behalf application is made, pursuant to this Act, for an order;

"*child*" means -

- (a) a child of both parties to a marriage;

(b) a child (whether or not a child of either party to a marriage) who is or has been living in the household residence as a member of the family;

(c) a child of a man and a woman who, although not married to each other are or have lived together in the same household;

(d) a child (whether or not a child of the man and woman referred to in paragraph (c) or either of them) who -

(i) is or has been a member of their household; or

(ii) who resides in that household on a regular basis; or

(iii) of whom either the man or woman is a guardian;

"*court*" means a court of summary jurisdiction;

"*de facto spouse*" in relation to a person, means a person of the opposite sex to the first-mentioned person, who is living with the first-mentioned person as the person's husband or wife although not legally married to the first-mentioned person;

"*dependant*" in relation to a person includes -

(a) a person over the age of eighteen years; and

(b) who normally resides or resides on a regular basis with the first-mentioned person;

"*ex parte application*" means an application made without notice to the respondent;

"*household residence*" means -

(a) in relation to both spouses, the dwelling house that is used [habitually] by both parties or either of them as the only or principal family residence together with any land, buildings or improvements appurtenant thereto and wholly or mainly used for the purposes of the household;

(b) in relation to a man or a woman who are no longer spouses, the dwelling house that was last used [habitually] by either of them, before or after they ceased to be spouses, as the only or principal family residence, together with any land, buildings, or improvements appurtenant thereto and used wholly or mainly for the purposes of the household;

"*occupation order*" means an order made under section 7 and includes an interim order made under that section;

"*parent*" means -

(a) the parent or grandparent of a spouse;

(b) the parent or grandparent of a respondent, either by consanguinity or affinity;

"*prescribed person*" means the spouse of the respondent, a parent or a child or dependant of that person;

"*spouse*" includes a former spouse, *de facto spouse* and former *de facto spouse*;

"*protection order*" means an order made under section 4 includes an interim order made under that section;

"*respondent*" means a person against whom an order is granted pursuant to this Act;

"*tenancy order*" means an order made under section 11 and includes an interim order made under that section;

"*tenant*", in relation to any dwelling house, includes any person -

(a) whose tenancy has expired or has been determined; and

(b) who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwelling house, and the term "tenancy" has a corresponding meaning.

Persons entitled to apply under this Act

3. (1) An application for an order other than a tenancy order under this Act may be made by -

(a) the spouse of the respondent being the spouse in respect of who the alleged conduct has been, or is likely to be engaged in by the respondent;

(b) where the alleged conduct involves a child or dependant -

(i) a person with whom the child or dependant normally resides or resides on a regular basis; or

(ii) a parent or guardian of the child or dependant;

(iii) where the dependant is not mentally disabled, the dependant; or

(iv) a person experienced or qualified in social welfare approved by the Minister in writing; or

(v) a police officer; or

(vi) a person holding the office or performing the duties of a probation officer or medical social worker.

(2) An application for a tenancy order may be made by the respondent's spouse as mentioned in subsection (1)(a) [or a parent or guardian of a child or a dependant].

Application for protection order

4. (1) Application may be made to the court in accordance with this Act for a protection order prohibiting the respondent -

(a) from entering or remaining in the household residence of any prescribed person;

(b) from entering or remaining in any area specified in the order, being an area in which the household residence of a prescribed person is located;

- (c) from entering the place of work or education of any prescribed person;
 - (d) from entering or remaining in any place where a prescribed person happens to be;
 - (e) from molesting a prescribed person by -
 - (i) watching or besetting the prescribed person's household residence, place of work or education;
 - (ii) following or waylaying the prescribed person in any place;
 - (iii) making persistent telephone calls to a prescribed person; or
 - (iv) using abusive language to or behaving towards a prescribed person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the prescribed person.
- (2) On hearing an application under subsection (1) the court may make a protection order if it is satisfied that -
- (a) the respondent has used or threatened to use, violence against, or caused physical or mental injury to a prescribed person and is likely to do so again; or
 - (b) having regard to all the circumstances, the order is necessary for the protection of a prescribed person, and the court may, if it thinks fit, attach a power of arrest to the order.
- (3) A protection order may be made on an *ex parte* application if the court is satisfied that the delay that would be caused by proceeding on notice would or might entail -
- (a) risk to the personal safety of a prescribed person; or
 - (b) serious injury or undue hardship, and any protection order made on an *ex parte* application shall be an interim order.
- (4) Where a protection order is granted on an *ex parte* application, the respondent may apply

immediately for it to be discharged.

Breach of protection order

5. (1) Where a protection order or an interim protection order is made and -

(a) it is served personally on the respondent; and

(b) the respondent contravenes the order in any respect, the respondent is guilty of an offence and is liable on conviction to a fine not exceeding [five thousand] dollars or to imprisonment for a term not exceeding [six] months or both.

(2) Subject to the provisions of this section, where a protection order is in force, a constable may arrest without warrant a person whom he has reasonable cause to suspect of having committed a breach of the order.

(3) No person shall be arrested under this section unless the constable believes that the arrest of that person is reasonably necessary for the protection of the applicant.

(4) For the purposes of subsection (2), the constable shall take into account -

(a) the seriousness of the act which constituted the alleged breach;

(b) the time that has elapsed since the alleged breach was committed;

(c) the restraining effect of other persons or circumstances on the respondent;

(d) the need for a cooling-off period.

(5) Where an arrest is made under this section -

(a) the person arrested shall be entitled to make a telephone call to one person of his choice, other than the applicant or a prescribed person;

(b) it shall be the duty of the constable who makes the arrest to ensure that the person

arrested is informed, as soon as practicable after the arrest, of the right conferred by paragraph (a).

Duration and discharge of protection order

6. (1) A protection order shall cease to have effect if a party to the proceedings in which the order was made applies to the court for it to be discharged.

(2) A copy of an application under subsection (1) shall be served personally on each person who was a party to the proceedings in which the original order was made.

(3) In determining whether to discharge a protection order the court shall have regard to the matters referred to in section 4(2).

OCCUPATION ORDERS

Application for a grant of occupation order

7. (1) Application may be made to the Court for an occupation order granting the prescribed person named in the order the right to live in the household residence.

(2) Subject to section 15 and subsection (3) of this section, the Court may, on an application under subsection (1), make an occupation order granting to the applicant, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right to occupy the household residence or any other premises forming part of the household residence.

(3) The Court may make an order under subsection (2) only if the Court is satisfied that such an order -

(a) is necessary for the protection of a prescribed person; or

(b) is in the best interests of a child.

***Ex parte* application for occupation order**

8. (1) An occupation order may be made on an *ex parte* application if the Court is satisfied that -
- (a) the respondent has used violence against or caused physical or mental injury to a prescribed person; and
 - (b) the delay that would be caused by proceeding on notice could or might expose the prescribed person to physical injury.
- (2) Any occupation order made on an *ex parte* application shall be an interim order.
- (3) Where the Court grants an occupation order on an *ex parte* application, the Court shall at the same time make an interim protection order unless it considers that there are special reasons why such an order should not be made.
- (4) An occupation order which is made on an *ex parte* application while the prescribed person concerned and the respondent are living together in the same household residence shall expire -
- (a) on the discharge of the order by the Court;
 - (b) on the discharge of an interim protection order made pursuant to subsection (3);
 - (c) in any other case, at the expiration of a period of seven days after the date on which the occupation order was made.
- (5) Where an occupation order is made on an *ex parte* application, the respondent may apply immediately for variation or discharge of that order.

Effect of occupation order

9. Where an occupation order is made the prescribed person to which it relates shall be entitled, to the exclusion of the respondent, personally to occupy the household residence to which that order relates.

Variation or discharge of occupation order

10. The Court may if it thinks fit on the application of either party, make an order -
- (a) extending or reducing any period specified by the Court pursuant to subsection (2) of section 7; or
 - (b) varying or discharging any terms and conditions imposed by the Court pursuant to that subsection.

TENANCY ORDERS

Tenancy order

11. (1) An application may be made in accordance with this Act to the Court for an order vesting in the applicant, the tenancy of any dwelling house which, at the time of the making of the order -
- (a) the respondent is either the sole tenant or a tenant holding jointly or in common with the applicant; and
 - (b) is the household residence of the applicant or the respondent.
- (2) Subject to section 15, the Court may make an order on an application under subsection (1) if and only if the Court is satisfied that such an order -
- (a) is necessary for the protection of the applicant; or
 - (b) is in the best interests of a child or a dependant.

Grant of tenancy order on an *ex parte* application

12. (1) A tenancy order may be made on an *ex parte* application if the Court is satisfied that -

- (a) the respondent has used violence against or caused physical or mental injury to the applicant or dependant; and
 - (b) the delay that would be caused by proceeding on notice would or might expose the applicant, child or dependant, as the case may be, to physical injury.
- (2) Any tenancy order made on an *ex parte* application shall be an interim order.
- (3) Where the Court makes a tenancy order on an *ex parte* application the Court shall, at the same time, make an interim protection order unless the Court considers that there are special reasons why such an order should not be made.
- (4) A tenancy order which is made on an *ex parte* application while the applicant and the respondent are living together in the same household shall expire -
- (a) on the discharge of the order by the Court;
 - (b) on the discharge of an interim protection order made under subsection (3);
 - (c) in any other case, at the expiration of a period of seven days after the date on which the order was made.
- (5) Where a tenancy order is made on an *ex parte* application the respondent may apply immediately for variation or discharge of that order.

Effect of tenancy order

13. (1) Where a tenancy order is made the applicant shall, unless the tenancy is sooner determined, become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of that order, and the respondent shall cease to be the tenant.
- (2) Every tenancy order shall have effect and may be enforced as if it were an order of the Court for possession of the land granted in favour of the applicant.
- (3) nothing in this Act or in any tenancy order -

(a) limits or affects the operation of any enactment or rule of law for the time being applicable to any tenancy to which a tenancy order applies, or to the dwelling house held under the tenancy; or

(b) authorises the Court to vary, except by vesting the tenancy pursuant to this section or revesting the tenancy pursuant to section 15, any express or implied term or condition of the tenancy.

Power to discharge tenancy order and revest tenancy

14. (1) The Court may, if it thinks fit on the application of -

(a) the applicant or respondent; or

(b) the personal representative of either party, make an order (in this section referred to as a "revesting order") revesting the tenancy accordingly.

(2) Where a revesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

PROVISIONS RELATING TO OCCUPATION ORDERS AND TENANCY ORDERS

Procedure relating to occupation order and tenancy orders

15. (1) Before making any occupation order (other than an interim occupation order) or any tenancy order (other than an interim tenancy order) the Court shall direct that notice be given to any person having an interest in the property which would be affected by the order.

(2) The person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and to be heard in the matter of the application for the occupation order or tenancy order as a party to that application.

(3) Where an application is made for an occupation order, the Court may treat that application as an application for a tenancy order or an occupation order or both and may make a tenancy order (whether or not it makes an occupation order) if it is satisfied that -

(a) it has jurisdiction to make the tenancy order and that the making of such an order is appropriate; and

(b) subsection (1) has been complied with in respect of the making of a tenancy order.

(4) Where an application is made for a tenancy order, the Court may treat that application as an application for an occupation order or a tenancy order or both and may make an occupation order (whether or not it makes a tenancy order) if it is satisfied that -

(a) it has jurisdiction to make an occupation order and that the making of such an order is appropriate; and

(b) subsection (1) has been complied with in respect of the making of an occupation order.

Power of Court to make ancillary order re: furniture

16. (1) On or after making an occupation order or a tenancy order, the Court may, subject to subsection (2) make an order granting to the applicant the use, for such period and on such terms and subject to such conditions as the Court thinks fit, of all or any of -

(a) the furniture;

(b) household appliances; and

(c) household effects, in the household residence or other premises to which the occupation order relates or in the dwelling house to which the tenancy order relates.

(2) Notwithstanding subsection (1), an order made under that subsection shall continue in force for a period of three months beginning on the date on which the order is made, unless the Court otherwise directs, but, in any event, shall expire if the occupation order made in relation to the household residence or other premises or the tenancy order made in relation to the dwelling house expires or is discharged.

Interim orders

17. (1) Every interim order made under this Act on an *ex parte* application shall specify a date (which shall be as soon as reasonably practicable thereafter) for a hearing on whether an order should be made in substitution for the interim order.

(2) The copy of any such interim order which is served on the respondent shall notify the respondent that unless the respondent attends on the specified date to show cause why an order should not be made in substitution for the interim order, the Court may discharge the interim order and make an order in substitution therefor.

(3) At the hearing referred to in subsection (1) the Court may -

(a) discharge the interim order; or

(b) discharge the interim order and make an order in substitution therefor; or

(c) on good cause being shown, adjourn the hearing to such date and place as the Court may specify.

(4) Where a hearing is adjourned under subsection(3)(c) the Court shall, at the adjourned hearing, exercise either the power conferred by paragraph (a) or by paragraph (b) of that subsection.

(5) In this section -

"*interim order*" means an interim protection order, an interim occupation order or an interim tenancy order, as the case may be;

"*order*" means a protection order, an occupation order or a tenancy order, as the case may be, not being or an interim order.

GENERAL

Conduct of proceedings

18. (1) No person shall be present during the hearing of any proceedings under this Act (other than criminal proceedings) except -

- (a) officers of the Court;
- (b) parties to the proceedings and their counsel;
- (c) witnesses;
- (d) any other person permitted by the Judge to be present.

(2) Any witness shall leave the courtroom if asked to do so by the Judge.

(3) Nothing in this section shall limit any other power of the Court to hear proceedings *in camera* or to exclude any person from the Court.

Evidence

19. In any proceedings under this Act (other than criminal proceedings) including proceedings by way of appeal, the Court may receive such evidence as it thinks fit whether it is otherwise admissible in a Court of law or not.

Standard of proof

20. Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

Restriction of publication of reports of proceedings

21. (1) Subject to subsection (4), no person shall publish any report of proceedings under this Act (other than criminal proceedings) except with the leave of the Court which heard the proceedings.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Nothing in this section limits -

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the Court to punish any contempt of Court.

(4) This section shall not apply to the publication of any report in any publication that -

(a) is of a *bona fide* professional or technical nature; or

(b) is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, marriage counsellors or social welfare workers.

Orders by consent

22. In any proceedings under this Act a Court may make any order by the consent of all the parties to such proceedings.

Counselling

23. The Court may, on making an order under this Act, recommend either or both parties to participate in counselling of such nature as the Court may specify.

Appeals

24. (1) Any person aggrieved by -

(a) the making of an order by the Court;

(b) the refusal of the Court to make an order, may, within (twenty-eight) days after the

decision of the Court, appeal to the Court of Appeal.

(2) Except where the Court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every such injunction or other order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

Protection of mortgagee

25. (1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

Rules of Court

26. Rules of Court may be made for the purpose of regulating the practice and procedure of the Court in proceedings under this Act providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(12) Johns Hopkins University & Suzanne Mubarak Regional Centre for Women’s Health and Development Model Law against Domestic Violence [2009]

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Preamble

Chapter I – General Principles and Definitions

Article 1. [Title]

The present Law may be cited as the [Law against Domestic Violence] of [name of State] [year of adoption].

Article 2. Commencement

The present Law shall come into force on the [date].

Article 3. Objectives of the Law

This Law aims at guaranteeing the human rights of all women in the scope of domestic and family relations, with a view to protecting them against all forms of discrimination, exploitation, violence, cruelty, oppression and negligence, by -

- a. Classifying and defining domestic violence against women;
- b. Recognizing the crime of domestic violence, providing for the appropriate sanctions and establishing criminal liability;
- c. Establishing measures for assistance and protection of women in the situation of domestic violence;
- d. Ensuring efficient access to justice for the victims of domestic violence;
- e. Creating special Family Courts for domestic violence against women with civil and criminal competence to address the issue of violence against women.

Article 4. Underlying Principles of the Law

This Law takes into consideration the following principles that guide its implementation and interpretation:

- a. Respect for the human rights of women, their integrity and dignity;
- b. Non-discrimination and the principle of equality;
- c. A gender-sensitive approach;
- d. A victim-centered approach
- e. The best interest of the child as a member of the family.

Article 5. Domestic Violence

(1) For the purpose of this Law, domestic violence against women is defined as any action, threat thereof, or omission that causes the woman's death or injury, or any physical, psychological, sexual, or economic abuse or moral damage within the scope of a domestic relationship.

(2) The forms of domestic violence include, but are not limited to -

- a. Physical violence, understood as any behavior that offends the woman's bodily integrity or health;
- b. Psychological violence, understood as any behavior that causes emotional damage and reduction of self-esteem, or that harms and disturbs full development, or that aims at degrading or controlling the woman's actions, behaviors, beliefs and decisions, by means of threat, embarrassment, humiliation, manipulation, isolation, constant surveillance, constant pursuit, insult, intimidations, blackmail, ridiculing, exploitation and limitation of the rights to come and go, or any other means that cause damage to the woman's psychological health and self-determination, or any series of acts which collectively cause a woman to fear for her safety;
- c. Sexual violence, understood as any behavior that constitutes sexual assault, irrespective of the nature of the relationship between the perpetrator and the victim; that includes forcing the woman to witness, maintain or participate in unwanted sexual intercourse, by means of intimidation, threat, coercion or the use of force; that includes the woman to commercialize or to use, in any way, her sexuality; that forces her to marry, to become pregnant, to have an abortion

or to engage in prostitution, by means of coercion, blackmail, bribe, manipulation, intimidation or other illegal means;

d. Economic abuse, understood as any behavior that constitutes deprivation of economic or financial resources which a woman is entitled to by law, the disposition, retention or subtraction of moveable or immovable property in which she has a material interest and that results in hiding or hindering the use of property or in damaging or destroying property in which the woman has a material interest;

e. Moral violence, understood as any behavior that constitutes slander, defamation or insult; or verbal attacks, profanity, name-calling and other violent harassment.

(3) Without limiting Paragraph (2) of this Article, a person psychologically abuses a female child, if that person -

a. Causes or allows the child to see or hear the physical, psychological and moral, or sexual abuse of a person with whom the child has a domestic relationship; or

b. Places the child, or allows the child to be placed, at real risk of seeing or hearing that abuse occurring, and as a result causes actual or imminent harm to the child.

(4) A single act may amount to domestic violence.

Article 6. Use of Terms in the Law

In this Law, unless the context otherwise requires -

“Applicant” means a person who applies for protection under this Law, a person on whose behalf an application is made, or a person who is granted a Protection Order;

“Child” means a person under the age of eighteen years who is living as a dependent of the family of the victim or the offender;

“Complainant” means the victim of domestic violence herself or any other person, who makes a complaint to the police under Article 10;

“Courts” shall mean specialized Courts for Domestic Violence as in Article 14;

“Domestic relationship” means a family relationship, a relationship akin to a family relationship or a relationship in a domestic situation that exists or has existed between a complainant and an offender and includes a relationship where the complainant -

a. Is or has been married to the offender;

b. Is engaged to the offender;

c. And the offender are parents of a child, are expecting a child together or are foster parents to a child;

d. Is a parent, an elderly blood relation or is an elderly person who is by law a relative of the offender;

e. Is a domestic worker in the household of the offender;

f. Lives in or attends a public or a private care institution and is under the care and control of the offender; or

g. Is in a relationship determined by the Court to be a domestic relationship.

“Marriage” means an institution recognized under any law;

“Offender” means a person against whom a complaint of domestic violence is filed;

“Place of Safety” means premises where the welfare of a victim of domestic violence is assured;

“Respondent” means the person against whom a Protection Order or an Emergency Protection Order is sought or made;

“Shelter” means a temporary residence for domestic violence victims, where they are provided with rehabilitation and protection services;

“Victim” means a victim of domestic violence, including alleged victims of domestic violence.

Article 7. Prohibition of Domestic Violence

(1) Under this Law, it is prohibited for any person in a domestic relationship to engage in any act of domestic violence.

(2) The use of violence in the domestic setting is not justified on the basis of consent.

Article 8. Rights of the Victim

The victim of domestic violence shall be guaranteed the following rights -

(1) Right to Privacy: The confidentiality and privacy of every woman in the situation of domestic violence shall be ensured, especially with regards to the investigation and any judicial proceedings, as well as with regards to medical proceedings and care. This shall include the non-disclosure of the victim’s sexual history in any court proceedings;

(2) Right to be Treated with Respect and Dignity: It shall be provided that police, law enforcement forces and courts show and treat every victim of domestic violence with compassion, respect and dignity to avoid re-victimization;

(3) Right to get a Divorce and Live Apart: Every woman in the situation of domestic violence shall have the right to set up her own household, to live separately and to claim a divorce from her husband;

(4) Right to be Represented and Assisted by a Lawyer at no Charge: Every woman in a situation of domestic violence shall be guaranteed free, specialized legal assistance at all stages of the investigation and judicial proceedings;

(5) Right to be Informed of all the Procedural Acts: The victim of domestic violence shall be informed of all the procedural acts related to the aggressor, especially those related to the entry and exit from prison;

(6) Right to Cessation of Domestic Violence: Every woman in the situation of domestic violence shall have the right to have protective measures adopted to prevent further violence; she shall have the right to be taken to a medical facility for treatment and to be referred to a place of safety.

Article 9. Prevention

- (1) The State through its authorized bodies shall support and ensure introduction and application of mechanisms for the prevention of domestic violence.
- (2) Mechanisms for prevention of domestic violence shall include, but are not limited to -
 - a. Promotion of studies and research, statistics and other relevant information on the causes, consequences and frequency of domestic violence against women, for the systematization of data, to be unified nationally, and the regular evaluation of the results of the adopted measures;
 - b. Respect, in the social communication media, for the ethical and social values of the person and the family, avoiding stereotyped roles that legitimize or encourage domestic violence in compliance with the Right to Free Speech;
 - c. Promoting and conducting of educative campaigns to prevent domestic violence against women, which disseminate ethical values of unrestricted respect to the dignity of every human person with a gender and race or ethnicity perspective;
 - d. Emphasis, in the school syllabus of all levels of education, on contents related to human rights, gender and race or ethnicity equity and the problem of domestic violence against women;
 - e. Sensitization and training for healthcare personnel, promotion of common protocols and development of common healthcare indicators for monitoring gender violence and for a fast and early detection of violence against women in the Health-Care-System;
 - f. Implementation of specialized police assistance for women;
 - g. Dissemination of this Law and the instruments of protection of women's human rights, including the distribution of information in a form understandable by the general public on the rights of victims the protection of such rights and the legal consequences for abusers.

Chapter II – Complaints

Article 10. Filing of a Complaint

- (1) A victim of domestic violence or any other person with information about domestic violence may file a complaint about the domestic violence.
- (2) If the victim is a female child, the complaint may be made by one of the parents;
- (3) Where a victim is, for any reason, unable to file a complaint personally, a member of the victim's family may file a complaint on behalf of the victim.
- (4) Where a person who could have been a complainant under this Law has died, the complaint may be made by the deceased person's personal representative or by a member of the deceased's family or any other person competent to represent the deceased.
- (5) A complaint of domestic violence shall be filed with the police at the place where -
 - a. The victim resides;
 - b. The victim is residing temporarily, where she has left her usual place of abode;
 - c. The offender resides;
 - d. The domestic violence occurred or is occurring.

(6) A complaint may be submitted in various forms, including orally, in writing and by telephone.

(7) No person who gives any such information in good faith shall incur any civil or criminal liability in respect of the giving of such information.

Article 11. Police Assistance

(1) In case of imminent or actual domestic violence against women, the police authority that learns of the occurrence shall immediately adopt the appropriate legal measures.

(2) In all other cases of domestic violence, the police officer shall respond promptly and shall offer all the assistance and protection that the circumstances of the case or the person require, even when the person reporting is not the victim of the domestic violence.

(3) Assistive measures shall include, but are not limited to -

- a. Guaranteeing police protection; when necessary, communicating the occurrence immediately to the Prosecutor's Office and the Judiciary Branch;
- b. Ensuring the safety of the person reporting the domestic violence;
- c. Assisting the victim in the preparation of any kind of Protection Order under this Law;
- d. Upon request of the victim or in case of necessity, to ensure transfer of the victim to the institution of medical care;
- e. Upon request of the victim or in case of necessity, to ensure transfer of the victim and her children to a shelter or safe place;
- f. In case of transfer to another location, to ensure that the victim takes her personal belongings from the place of occurrence or residence, if necessary, to accompany the victim to assure her safety.

(4) The police shall form a team of specialized police personnel to assist victims of domestic violence and to deal with the prevention and combating the crimes and offenses of domestic violence.

Article 12. Duties of the Police after Receiving a Complaint

(1) In all cases of domestic violence, after registering the occurrence, the police authority shall immediately -

- a. Hear the victim;
- b. Advise the victim of her rights and the services available to her;
- c. Collect all the evidence that can serve to clarify the fact and its circumstances;
- d. Determine the victim's physical condition and request subsequent examination by a medical expert;
- e. Hear the aggressor and the witnesses, including children;
- f. Identify the aggressor, add his/her criminal records to the report and indicate the existence of arrest warrants or records of other police occurrences against him/her;

g. Send, within the legal period of time, the complete police report to the judge and the Prosecutor's Office.

(2) The police shall not consider a domestic violence case to be inferior to other cases of violence.

(3) In all cases of domestic violence, the competent police authorities that conduct the preliminary investigation are not allowed to communicate in whatever way the name and surname of the victim and the offender, their home address, as well as any other facts that are likely to reveal their identity.

(4) Family mediation or intervention shall not be a bar to the investigation or prosecution of a complaint of domestic violence.

Article 13. Arrests by the Police

(1) A police officer may arrest a person for domestic violence with a warrant issued in pursuance of this Law or without a warrant.

(2) A police officer may arrest a person for domestic violence without a warrant where -

- a. An act of domestic violence is committed in the presence of the police officer;
- b. The police officer is obstructed by the person in the execution of police duties; or
- c. The person is held in lawful custody under this act and has escaped or attempts to escape from such custody.

(3) A police officer may arrest without a warrant upon reasonable grounds of suspicion, a person who -

- a. Has committed an offense of domestic violence; or
- b. Is about to commit an offense of domestic violence and there is no other way to equally effectively prevent the commission of the offense.

(4) A police officer may arrest a person without a warrant if the officer has reasonable cause to believe that the person has contravened or is contravening a Protection Order issued under Chapter V of this Law.

Chapter III – Judicial Proceedings / Procedures

Article 14. Specialized Courts

There shall be specialized courts for cases involving domestic violence and any kind of violence against women.

Article 15. Conduct of Proceedings / Court Hearing

(1) Proceedings for a Protection Order shall be held in private and in the presence of the parties, their lawyers and any other person permitted by the court to be present.

- (2) Despite Paragraph 1, when the Court is of the opinion that the presence of the respondent is likely to have a serious effect on the victim or a witness, the Court may take the steps that it considers necessary to separate the respondent from the victim or the witness, without sacrificing the integrity of the proceedings.
- (3) Nothing in this Article shall limit any other power of the Court to hear proceedings *in camera* or exclude any person from the Court.
- (4) There shall be no publication of any proceedings related to domestic violence.

Article 16. Evidence

- (1) Testimonies, written statements and affidavits of the victim and the respondent, witness statements, police reports, medical findings or records by hospitals and health centers, acts of expertise (expert witness declarations) and other documents issued by the social workers shall be admissible evidence in a hearing for a domestic violence Protection Order.
- (2) When the Court does not possess all evidence mentioned in Paragraph 1 of this Article, it shall assess the situation based on the description of circumstances and facts regarding the occurrence of domestic violence.
- (3) Evidence of the victim's sexual history shall not be introduced in any legal proceedings arising under this Law.

Article 17. Standard of Proof

Every question of fact arising in any proceedings under this Law (other than criminal proceedings) shall be decided on a balance of probabilities.

Article 18. Witness Interrogation

- (1) In cases of domestic violence, the members of the family shall be interrogated as witnesses without oath.
- (2) The minors at the hearing of the case are not summoned as witnesses in court, but their testimony, if it exists, is read, unless their interrogation is considered necessary by the Court.

Article 19. Record of Applications and Protection Orders

The Registry of the court shall maintain a record of all applications filed pursuant to this Law, and all the Protection Orders and Emergency Protection Orders issued by the Court under this Law.

Chapter IV – Protection Orders

Article 20. Purpose and Definition

- (1) A Protection Order is an act issued by the first instance court which defines temporary protection measures for victims in cases of domestic violence.
- (2) The purpose of a Protection Order shall be to prevent and deter domestic violence, to reverse the consequences of an abuse and to undertake efficient measures for the rehabilitation of offenders and the elimination of the circumstances that encourage new acts of domestic violence.
- (3) Protection Orders, including Emergency Protection Orders, shall be available to victims of domestic violence in addition to and without any requirement for the victim to institute other legal proceedings, such as criminal, civil or divorce proceedings.

Article 21. Application for a Protection Order

- (1) A person who is or has been in a domestic relationship with another person may apply to the Court for a Protection Order against that other person.
- (2) Where the person who is eligible to apply for a Protection Order is a child, the application may be made by a representative.
- (3) Where the person who is eligible to apply for a Protection Order is unable to make the application personally, whether by reason of physical incapacity or fear of harm or other sufficient cause, the application may be made on behalf of that person.
- (4) The application may be filed in a specialized court for violence against women/domestic violence situated where -
 - a. The applicant resides;
 - b. The applicant is residing temporarily, where she has left her usual place of abode;
 - c. The respondent resides; or
 - d. The act of domestic violence occurred or is occurring or is likely to occur.
- (5) The application should address the following -
 - a. The act of domestic violence that has taken place, its timing and place; or the imminent danger of such an act;
 - b. The harm which has been or could have been inflicted on a victim as a result of domestic violence;
 - c. The full name and place of residence of the complainant and offender;
 - d. The data concerning the family or domestic relationship between the victim and the respondent;
 - e. Any requests for special protection.

Article 22. Court Proceedings for the Issuance of a Protection Order

- (1) Immediately after receiving an application for a Protection Order, the Court shall schedule a hearing and summon the respondent to appear before the Court to show cause on why a Protection Order shall not be issued.
- (2) The first hearing of the applicant and the respondent shall be within a period of 14 days after the filing of the application.
- (3) Where the respondent appears on the date specified in the summons, the court shall proceed to hear the matter. Otherwise, where the respondent does not appear on the date specified, but the court is satisfied that the application contains *prima facie* evidence of domestic violence; the Court may grant the application/shall issue the Protection Order.
- (4) In hearing the matter, the Court may consider any evidence previously received and such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.
- (5) The Protection Order shall be issued in the presence of the offender.
- (6) A court that issues a Protection Order must explain the following to the respondent and the applicant, or their legal representatives, who are present in the court when the order is issued -
 - a. The purpose, terms and effect of the order;
 - b. The consequences that may follow if the defendant contravenes the Protection Order;
 - c. The means by which the Protection Order may be extended, varied or revoked.
- (7) If the perpetrator is not present at the hearing and the pronouncement, the Protection Order shall be served on him immediately.
- (8) The Court shall also send within 24 (twenty-four) hours a copy of the Protection Order to the following persons -
 - a. The victim and other persons mentioned in the Protection Order;
 - b. The police department serving the area in which the victim or other persons mentioned in the Protection Order resides temporarily or permanently.
- (9) A Court may not refuse to issue a Protection Order or impose any other condition solely on the grounds that other legal remedies are available to the applicant.

Article 23. Effects of a Protection Order

- (1) The Court shall grant a Protection Order if it is satisfied that -
 - a. The respondent is using, or has used, domestic violence against the applicant, or is likely to engage in domestic violence against the applicant; and
 - b. The issuance of a Protection Order is necessary for the protection of the applicant.
- (2) The Protection Order shall prohibit the respondent from committing any act of domestic violence against the woman applicant, and in particular from –
 - a. Physically abusing or threatening to physically abuse the woman applicant; and/or
 - b. Engaging or threatening to engage in any behavior which amounts to psychological abuse;

and/or

- c. Sexually abusing or threatening to sexually abuse, including forcing the applicant to engage in any sexual contact, whether married or not, and engaging in any sexual conduct that abuses, humiliates, or degrades the applicant or otherwise violates the applicant's sexual integrity, whether married or not; and/or
- d. Damaging, or threatening to damage property of the woman applicant, or engaging or threatening to engage in any behavior which amounts to economical abuse; and/or
- e. Any behavior which amounts to moral abuse; and/or
- f. Encouraging any person to engage in behavior against the applicant, where the behavior, if the respondent engaged in it, would be prohibited by the order.

Article 24. Supplementary Order

(1) A Protection Order may, at the request of the applicant or on the Court's own motion, be supplemented by any or all of the following provisions –

- a. Directing the respondent to seek counseling or other rehabilitative service;
 - b. Imposing mandatory rehabilitation of an abusive offender, who has committed an act of domestic violence under the influence of alcohol or drugs or other psychotropic substances, if there is a risk that the abusive person might repeat that act of violence;
 - c. Prohibiting or restraining the respondent from entering the victim's place of residence, or linger inside a specific distance to her place of residence, from haunting specified places which the victim regularly visits, such as her work-place, school, etc., or from otherwise intentionally inducing encounters with the victim or following her from place to place, or generally from being in a specific distance to the victim;
 - d. Prohibiting the respondent from contacting the victim through any means directly or indirectly, including written or phone communication;
 - e. Forcibly confining or detaining the applicant;
 - f. Depriving the applicant of access to adequate food, water, clothing, shelter or rest;
 - g. Committing any act which the court considers not to be in the best interest of the applicant;
 - h. Imposing a temporary restriction on the respondent's right to dispose of common property;
 - i. Temporarily Forbidding contact between the respondent and any child of the applicant;
- Specifying that contact between the respondent and a child of the applicant, must take place only in the presence and under the supervision of a social worker or a family member designated by the Court for that purpose; or
- Allowing such contact only under specific conditions designed to ensure the safety of the applicant, any child who may be affected, and any other family members, if the Court is satisfied that it is reasonably necessary for the safety of the child in question;

- j. Granting temporary sole custody of any child of the applicant or any child in the care of the applicant to the applicant or to another appropriate custodian if the Court is satisfied that it is reasonably necessary for the safety or welfare of the child in question;
- k. Temporarily directing the respondent to make periodic payments for the maintenance of the applicant, and of any children of the applicant, if the respondent is legally liable to support the applicant or the child, as an emergency measure where no such maintenance order is already in force, together with other emergency monetary relief as is appropriate;
- l. Directing the respondent to pay any rent, mortgage payment and maintenance to the applicant;
- m. Granting the applicant temporary possession of or control over specified personal property, including a motor vehicle, check book, bank card, health care services card or supplementary medical insurance card, identification documents, keys, utility or household accounts or other personal effects;
- n. Requiring a police officer to seize -
 - Any weapons where the weapons have been used or have been threatened to be used to commit domestic violence, and
 - Any documents that authorize the respondent to own, possess or control a weapon described in the subparagraph above;
- o. Ordering a social worker, counselor, medical officer, police officer, friend or other person whom the Court deems fit to monitor the relationship between the applicant and the respondent. An affidavit by such a person that the respondent has breached the terms of a Protection Order shall be *prima facie* evidence of such fact.

Article 25. Residence Order

- (1) Where the Court in issuing a Protection Order considers it expedient for the safety of the woman/victim and her dependents to issue a Residence Order, the Court may issue the order requiring the respondent to vacate the matrimonial home or any other residence shared by the applicant and the respondent and grant the applicant exclusive possession, regardless of ownership.
- (2) Where a residence is leased by a respondent pursuant to an oral, written or implied agreement and the applicant who is not a party to the lease is granted exclusive possession of that residence as permitted by Paragraph 1, no landlord shall evict the applicant solely because the applicant is not a party to the lease.
- (3) In furtherance of Paragraph 2, the landlord shall provide the details of the lease to the applicant on request.
- (4) If the court issues a Residence Order, it shall be supplemented by a provision directing a police officer to remove the respondent from the residence immediately or within a specified time.

(5) The Residence Order is a special kind of Protection Order. In this Law, all provisions regarding the Protection Order shall also be applicable to the Residence Order.

Article 26. Matters to be Taken Into Consideration When Issuing a Protection Order

In determining an application for a Protection Order, the Court shall regard -

- a. The need to ensure that the applicant is protected from any further violence;
- b. The nature, history or pattern of domestic violence and whether it is more likely than not that the respondent will continue the family violence;
- c. The welfare of any child affected or likely to be affected, by the respondent's conduct;
- d. The need for accommodation of the applicant and the children (if any);
- e. Any hardship that the issuance of the order would cause to the respondent or to any other person;
- f. Any other matter which the Court considers relevant in the circumstances of the case.

Article 27. Emergency Protection Order

(1) An Emergency Protection Order is a short-term Protection Order issued by a Judge for immediate domestic violence protection.

(2) The Emergency Protection Order may be requested by the victim or by the police or any other person on behalf of the victim if the victim is unable, whether by reason of physical incapacity or fear of harm or other sufficient cause, to make the application personally.

(3) Having received a request, the Judge, within a period of 48 (forty-eight) hours, shall know the request and decide upon the emergency protective measures.

(4) The Emergency Protection Order shall be granted by the Judge, regardless of a hearing of the offender, when it appears, by oral or affidavit evidence, that the Emergency Protection Order is necessary -

- a. To ensure the safety, health and welfare of the applicant; or
- b. To prevent substantial damage to the property of the applicant.

(5) The content of an Emergency Protection Order may be that of -

- a. A "Stay-Away Order" as described in Article 24, Paragraph 1 (c); and/or
- b. A "Residence Order" as described in Article 25, Paragraph 1; and/or
- c. A "Non-Contact Order" as described in Article 24, Paragraph 1 (d); and/or
- d. Any other content that the court deems necessary and appropriate for the specific circumstances.

(6) An Emergency Protection Order shall be granted for a period of not more than 21 (twenty-one) days.

(7) A police officer shall serve the Emergency Protection Order on the applicant and the respondent without undue delay.

(8) Every Emergency Protection Order shall -

- a. Advise the applicant and the respondent that they are entitled to a hearing before the court for the purpose of asking for the modification, termination or renewal of the Emergency Protection Order if either one requests a hearing; and
- b. Set out the procedures to be followed in order to make the request.

Article 28. Orders Made with the Consent of the Parties

The Court may, with the consent of the parties to the proceedings, issue any order under this Law without proof or admission of guilt.

Article 29. Duration of Protection Order

(1) A final Protection Order issued by the Court shall not exceed twelve months in the first instance but may be extended, modified or rescinded by the Court on a motion by a party to the original proceeding if there is good cause.

(2) Where a Protection Order contains a supplementary prohibition or condition of the kind specified in Article 24, the Court may specify different periods, each of less than twelve months, as the period for which each prohibition or condition is to remain in force.

(3) A Protection Order and an Emergency Protection Order are effective immediately upon being issued.

(4) Despite Paragraph 3, the Protection Order and the Emergency Protection Order are not enforceable against the respondent unless the respondent has been served with the order, or has received notice of the order.

Article 30. Extension of a Protection Order to Other Persons

A Court may extend a Protection Order to a person specified in the order other than the applicant if the Court is satisfied that -

- a. The respondent is engaging in or has engaged in behavior which would amount to domestic violence against the person specified in the order, referred to as the specified person, if the specified person were or had been in a domestic relationship with the respondent;
- b. The respondent's behavior towards the specified person is due, in whole or in part to the applicant's relationship with the specified person; or
- c. The extension of the Protection Order is necessary for the protection of the specified person.

Article 31. Contravention of Protection Order

The violation of a Protection Order, Supplementary Order, or Emergency Protection Order shall be a criminal offense with the penalties described in Chapter VIII of this Law.

Article 32. Modification and Cancellation of Protection Order

(1) An applicant or respondent may apply to the Court who granted the Protection Order, for the modification or cancellation of the Protection Order.

(2) After hearing the victim and the respondent, the Court may accept such a request, when it is satisfied that there is a change of circumstances that require such alteration, modification, variation or revocation.

(3) If the request for alteration, modification, variation or revocation is made by the victim of domestic violence, in addition to the prerequisite in Paragraph (2) the Court has to be satisfied that the request is made freely and voluntarily and is in the best interest of the woman.

Chapter V – Civil Claims for Damages

Article 33. Damages and Compensation

(1) Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the Court may award such damages in respect of the injury or damage or loss as it deems just and reasonable.

(2) The Court may take into account -

- a. The pain and suffering of the victim and the nature and extent of the physical or mental injury suffered, including compensation for emotional distress;
- b. The cost of medical treatment for such injuries, including dental expenses;
- c. Any loss of earnings arising therefrom;
- d. The amount or value of the property taken or destroyed or damaged;
- e. The cost for legal services, including the costs of an application pursuant to this act; and
- f. The necessary and reasonable lodging, transport and moving expenses, including the expenses required for setting up a separate household for the victim who was compelled to separate or be separated from the offender due to the domestic violence.

(3) In considering any necessary and reasonable expenses that may be taken into account under Paragraph 2 (f), the court may also take into account -

- a. The financial position of the victim as well as the financial position of the offender;
- b. The relationship that exists between the parties and the reasonableness of requiring the defendant to make or contribute towards such payments;
- c. The possibility of other proceedings between the parties and the matter being more appropriately addressed under laws relevant to the financial responsibility to spouses, former spouses and other dependants.

Chapter VI – Sanctions / Penalties

Article 34. Penalties for Domestic Violence

- (1) Any person who causes or inflicts domestic violence as defined in Article 4 of this Law shall be punished by a fine or imprisonment or both.
- (2) For domestic violence, which constitutes physical or sexual violence as defined in Article 4, Paragraph 2 (a) and (c), the punishment shall be imprisonment.

Article 35. Aggravated Circumstances

In relation to domestic violence against women, the following circumstances shall be considered as aggravated circumstances resulting in enhanced penalties for the offender -

- a. The domestic violence is committed against a female child; or the action of domestic violence is performed in the presence of a minor.
- b. The domestic violence is committed against a woman with special needs, a pregnant woman, or a woman who, due to whatever reason, is incapable of resisting;
- c. The violence is severe or life-threatening, or inflicts wounds or grievous bodily harm;
- d. A weapon is used; or
- e. In repeated incidents of domestic violence, regardless of the level of injury.

Article 36. Penalties for Violation of Protection Order

- (1) Any person who willfully contravenes a Protection Order or any provision thereof shall be guilty of an offense and shall, on conviction, be liable to [description of penalties].
- (2) Any person who willfully contravenes a Protection Order by using physical violence on the protected person or any person who is convicted for a second or subsequent violation of a Protection Order shall be punished with [description of penalties for this aggravated offense].
- (3) For the purpose of this Article, a “Protection Order” shall include a Residence Order and an Emergency Protection Order under this Law.

Article 37. Penalties for Publication of Domestic Violence Proceedings

- (1) Subject to Paragraphs (3) and (4) of this Article, no person shall publish any report of proceedings under this Law except by leave of the Court which heard the proceedings.
- (2) Any person who contravenes Paragraph (1) commits an offense and is liable on conviction to [description of penalties].
- (3) This Article shall not apply to the publication of any report in any publications that -
 - a. Is of a *bona fide* professional or technical nature; or
 - b. Is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, marriage counselors or social welfare workers.
- (4) This article shall not apply to the publication of criminal proceedings under this Law, if the reporter protects the identity of the victim.

Article 38. Statute of Limitations

- (1) The start of the statutory limitation deadline shall be suspended until the victim liberates herself from the situation of domestic violence.
- (2) For minors, the statutory limitation deadline shall be suspended until the minor reaches majority.

Chapter VII – Appeals

Article 39. Appeals to High Court / Courts of Appeal

- (1) Where, in any proceedings under this Law, a Court -
 - a. Has made or refused to make an order; or
 - b. Has otherwise finally determined or has dismissed the proceedings, any party to the proceedings or any other person prejudicially affected may appeal to a higher court.
- (2) Every appeal of this Law shall be heard as soon as practicable after the appeal is lodged.
- (3) Except where the Court making the order appealed from otherwise directs, -
 - a. The operation of an order made under this Law is not suspended by an appeal; and
 - b. Every order made under this Law shall be enforced as if no such appeal were pending.

Chapter VIII – Support Fund

Article 40. Victims of Domestic Violence Support Fund

- (1) A Fund for Victims of Domestic Violence shall be established.
- (2) The monies of the Fund shall be applied -
 - a. Towards the basic material support and compensation of victims of domestic violence;
 - b. For any matter connected with the rescue, rehabilitation and reintegration of victims of domestic violence;
 - c. Towards the construction and maintenance of reception shelters for victims of domestic violence;
 - d. To set up rehabilitation centers for domestic violence offenders;
 - e. For the training and capacity building of persons connected with the provision of shelter, rehabilitation and reintegration;
 - f. For the training and sensitization of judges, police officers, lawyers and prosecutors and for the establishment and training of specialized female police officers.

Article 41. Sources of Money for the Fund

The sources of money for the Fund shall include -

- a. Funding approved by Parliament for payment into the Fund;
- b. Voluntary contributions to the Fund from individuals, organizations and the private sector;
- c. Funding from any other source approved by the Minister of Finance.

Article 42. Management of the Fund

(1) The Fund shall be managed by the Victim of Domestic Violence Management Board.

(2) The Management Board shall consist of -

- a. The Chairperson who is the Minister responsible for Woman and Children's Affairs, or the representative of that Minister;
- b. One high-ranked representative of the Attorney General;
- c. One high-ranked representative of the Ministry for Health;
- d. One high-ranked representative of the Ministry for Education;
- e. One high-ranked representative from the Police Service;
- f. One high-ranked representative from the Department of Social Welfare;
- g. Two representatives of civil society organizations; and
- h. Four persons nominated by the President.

(3) Members of the Management Board shall be paid allowances approved by the Minister of Finance.

Article 43. Function of the Management Board

The Management Board shall -

- a. Make recommendations for a national plan of action against domestic violence and monitor and report on the progress of the national plan through the Minister for Woman and Children's Affairs;
- b. Advise the Minister for Woman and Children's Affairs on policy matters under this Law;
- c. Propose and promote strategies to prevent and combat domestic violence;
- d. Liaise with government agencies and organizations to promote the rehabilitation and reintegration of victims of domestic violence;
- e. Prepare guidelines for disbursement of monies from the Fund;
- f. Manage the Fund;
- g. Conduct research -
 - On international and regional developments, and
 - On standards for dealing with matters of domestic violence, and
- h. Deal with any matter concerned with domestic violence.

Article 44. Meetings of the Management Board

The Management Board shall meet at least once every three months.