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Good practices in legislation on violence against women

Expert group meeting

organized by

United Nations Division for the Advancement of Women
United Nations Office on Drugs and Crime

United Nations Office at Vienna, Austria
26 to 28 May 2008

Report of the expert group meeting

Report of the expert group meeting on good practices in legislation on violence against women

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Part I. Background and scope of the meeting

States are obligated under a comprehensive international legal and policy framework to address violence against women, including through the enactment of legislation. The first laws directly addressing domestic violence were passed in the United States of America and the United Kingdom in the 1970s and early 1980s, resulting in changes to criminal codes and the creation of separate laws containing the protection order remedy. Since the 1990s, many States have adopted or revised legislation on violence against women. These legal reforms have varied significantly in terms of the forms of violence they address, the type of action they mandate and the area of law (constitutional, civil, criminal, family) they reform. Some States have enacted legislation which addresses multiple forms of violence in a single piece of legislation. However, most legislation to date has addressed one or a few forms. Similarly, some States have enacted a single, comprehensive piece of legislation on violence against women, amending various legal codes and making provision for services and other preventative measures, while others have addressed the issue through incremental reforms. Some States have addressed violence against women in their Constitutions.

While States have made significant progress in the enactment of legislation to address violence against women, numerous gaps and challenges remain. The United Nations Secretary-General's 2006 in-depth study on all forms of violence against women notes that, as at 2006, only about half of United Nations Member States had in place legislative provisions that specifically addressed domestic violence, and fewer than half had legislation on sexual harassment, or on trafficking. Even where legislation existed, it was often limited in scope and coverage, such as definitions of rape by use of force; definitions of domestic violence limited to physical violence; treatment of sexual violence as a crime against the honour of the family or against decency, rather than a crime against a woman's right to bodily integrity; reduction of sentences in rape cases where the perpetrator marries the survivor and/or immunity in cases of spousal/marital rape; laws that allow early or forced marriage; inadequate penalties for crimes of violence against women, including reduction and/or elimination of sentences for so-called crimes of honour.

In response to the Secretary-General's study, the United Nations General Assembly adopted resolution 61/143 of 19 December 2006, calling upon Member States and the United Nations system to intensify their efforts to eliminate all forms of violence against women. The resolution stressed the need to treat all forms of violence against women and girls as a criminal offence punishable by law, and highlighted States' obligations to exercise due diligence to prevent, investigate and punish perpetrators of violence against women and girls, and to provide protection to complainants/survivors of such violence.

In follow-up to the Secretary-General's study and General Assembly resolution 61/143,

and building upon States' experiences with different legislative frameworks, the United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime convened a meeting of experts in Vienna, Austria, from 26 to 28 May 2008. The purpose of the expert group meeting was to analyze different legislative approaches for addressing violence against women; assess lessons learned and identify good practices in regard to legal reforms on violence against women; and develop a model framework for legislation on violence against women. The outcome of the meeting is intended to assist States and other stakeholders in enhancing existing, and developing new, legislation on violence against women and to identify good practices for the United Nations Secretary-General's database on violence against women, which is currently under development in response to resolution 61/143, paragraph 19.

The expert group meeting brought together a broad range of experts (see Annex I for the list of participants). The participants elected the following officers:

Chairperson:	P. Imrana Jalal
Vice-chairpersons:	Naina Kapur
	Njoki Ndungu
Rapporteur:	Cheryl Thomas
Facilitator of working group on sexual violence:	Naina Kapur
Facilitator of working group on domestic violence:	Funmi Johnson

The papers presented at the meeting can be found on the website of the United Nations Division for the Advancement of Women at: http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm.

The list of documents and programme of work for the meeting are contained in Annexes II and III, respectively.

The present report summarizes in Part II experts' general guidance on developing legislation on violence against women. It then presents in Part III the experts' proposed framework for legislation on violence against women.

Part II. Guidelines for developing legislation on violence against women

Defining the legislative goal

Members of the expert group meeting emphasized that at the beginning of any legislative process a clear legislative goal must be defined. The goal of legislation on violence against women 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.

Consultation with relevant stakeholders

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 meeting identified the following non-exhaustive list of stakeholders who should be consulted in the development of legislation on violence against women:

- survivors/complainants;
- non-governmental organizations that work on violence against women, including those with experience on violence against particular groups of women, such as indigenous, immigrant, disabled, or ethnic minority women;
- providers of services to survivors/complainants;
- government departments, including the national machinery for the advancement of women;
- national human rights institutions;
- police and other law enforcement personnel;
- prosecutors;
- judges;
- lawyers/bar associations;
- healthcare professionals;
- forensics personnel;
- social work/counselling providers;
- teachers and other personnel of education systems;
- national statistical offices;
- prison officials;
- religious and community leaders;
- media personnel.

There are numerous examples of legislation on violence against women developed

through a consultative process. In Turkey, a three-year extensive awareness-raising campaign and interactions with law-makers conducted by the Women's Platform for the Reform of the Turkish Penal Code, a broad coalition of organizations from around the country, resulted in an extensive reform of the Penal Code in 2004 which recognized women's sexual and bodily autonomy. Women's and children's rights organizations actively participated in the reform of the Penal Code of Honduras in 2005, which focused on sexual crimes and resulted in the redefinition of such crimes. An inclusive consultation process was used in the development of the *Act to Amend the Criminal Code (Sexual Assault)* (1992) in Canada, including consultations by the Ministry of Justice with women's groups. In Armenia, non-governmental organizations promoting the enactment of a domestic violence law are working with government representatives, including high-level police officials, to draft the law.

Evidence-based approach to legislation

The expert group meeting 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.

Guiding principles for legislation on violence against women

The expert group meeting emphasized the need to develop legislation on violence against women from a human rights perspective. Existing legislation addressing violence against women should be assessed in light of international standards, particularly human rights and criminal justice, in order to enact amendments or new legislation in accordance with such standards. The expert group meeting underscored the importance of adhering to principles in the development and implementation of legislation such as those outlined in the Secretary-General's in-depth study on all forms of violence against women.[1] According to these principles, laws on violence against women should:

- address violence against women as a form of gender-based discrimination, and a violation of women's human rights;
- make clear that violence against women is unacceptable and that eliminating it is a public responsibility;
- ensure that complainants/survivors of violence are not "revictimized" through the legal process;

[1] United Nations (2006) *Ending Violence against Women: from words to action, Study of the Secretary-General* (A/61/122/Add.1 and Corr.1), p. 104.

- promote women's agency and empower individual women who are complainants/survivors of violence;
- promote women's safety in public spaces; and
- take into account the differential impact of measures on women according to their race, class, ethnicity, religion, disability, culture, indigenous or migrant status, legal status, age or sexual orientation.

Laws on violence against women should also create mechanisms to:
- monitor implementation of legal reforms to assess how well they are working in practice; and
- keep legislation under constant review and continue to reform it in the light of new information and understanding.

Coordinated and gender-sensitive implementation of legislation

The expert group meeting emphasized that the enactment of legislation is only the first step and that, where legislation exists, measures must be in place to ensure that it is implemented effectively. Particular attention was drawn by the expert group meeting to the persistence of myths and stereotypes in relation to women complainants/survivors of violence and the impact that such attitudes have on women's experience of the justice system. United Nations human rights treaty bodies have frequently expressed concern that legislation on violence against women has not been effectively implemented due to: attitudes of law enforcement officers that discourage women from reporting cases; high dismissal rates of cases by police and prosecutors; high withdrawal rates of complaints by complainants/survivors; low prosecution rates; low conviction rates; failure of courts to apply uniform criteria, particularly in relation to measures to protect survivors; lack of legal aid and high costs of legal representation in courts; practices that deny women agency, such as detaining women for their "protection" without their consent; and use of reconciliation proceedings between a perpetrator and a complainant/survivor of violence in criminal and divorce cases to the detriment of the complainant/survivor.[2]

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 (local, regional, federal), and between government and civil society, to ensure the thorough and gender-sensitive implementation of legislation on violence against women. 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

[2] United Nations (2006) supra note 1, see, inter alia, pp. 96-97 setting out concerns of the international human rights treaty bodies.

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.

Part III. Framework for legislation on violence against women

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Introduction to the framework

Content of the framework

This framework contains recommendations on what should be included in legislation on violence against women. Each recommendation is followed by a commentary explaining the recommendation and providing examples of promising practices.

The framework contains two types of recommendations:

1. those that are applicable to all forms of violence against women; and
2. those that are specific to either domestic violence or sexual violence, such as definitions and certain types of protection.

It is envisaged that the framework will be developed over time in order to elaborate specific recommendations on other forms of violence against women.

The United Nations Office on Drugs and Crime is developing model legislation on trafficking in persons intended as a guide for States in implementing the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Specific recommendations in relation to trafficking are therefore not addressed in this framework. However, each of the general recommendations of the framework applies to all forms of violence against women, including trafficking in women and girls.

The framework is based on the knowledge, understanding and experiences of those present at the expert group meeting, and shares existing benchmarks, diverse points of view and experiences based on country contexts and different institutional structures. The framework draws on recent legislative developments, in particular those that incorporate a comprehensive approach, including measures for the prevention of violence, protection and support of the complainant/survivor, punishment of the perpetrator, and measures to ensure the thorough implementation and evaluation of the law. Therefore, laws such as the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) and the Mexican *Law on the Access of Women to a Life Free of Violence* (2007) are referred to repeatedly in this framework. Throughout the framework, reference to certain aspects/sections of a piece of legislation as a promising practice does not imply that the legislation in its entirety is considered a promising practice.

Purpose of the framework

The framework is intended to serve as a tool for the development, adoption and amendment of legislation which prevents violence against women, punishes perpetrators, and ensures the rights of survivors of violence against women everywhere.

Terminology

The terminology used in this framework is consistent with human rights standards and gender equality. Throughout the framework the term “complainant/survivor” replaces the language of “victim” which constructs a disempowered picture of persons who experience violence against women.

There was discussion amongst the experts regarding the term “domestic violence” and the need to broaden the scope of persons who are covered by legislation on this topic. The group suggested that this form of violence may also be referred to violence against women in the private sphere. While the framework uses the term “domestic violence” as this is the terminology currently used in the majority of legislation on the topic, it emphasizes the need for an expansive definition of such violence.

The term “legislation” is used throughout the framework to refer to legislation on violence against women. The terms “State” and “country” are used interchangeably to refer to Governments at the national level.

Framework for legislation on violence against women

1. Legislative preamble

A. Violence against women as a form of gender-based discrimination

Recommendation
Legislation should:

- acknowledge that violence against women is a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women's human rights;
- define discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field; and
- provide that no custom, tradition or religious consideration may be invoked to justify violence against women.

Commentary
Over the past two decades, violence against women has come to be understood as a violation of women's human rights and a form of gender-based discrimination. Legislation on violence against women should be in conformity with the United Nations General Assembly *Declaration on the Elimination of Violence against Women* (resolution 48/104 of 1993), read together with article 1 of the *Convention on the Elimination of All Forms of Discrimination against Women*, and general recommendations No. 12 (1989) and 19 (1992) of the Committee on the Elimination of Discrimination against Women.

Various pieces of legislation have been developed which explicitly acknowledge violence against women as a form of discrimination and a violation of human rights. Some refer specifically to international and regional human rights instruments. For example, Article 1 of the Costa Rican *Criminalization of Violence against Women Law* (2007) states: "This Act is designed to protect the rights of victims of violence and to punish forms of physical, psychological, sexual and patrimonial violence against adult women, as discriminatory practices based on gender, and specifically in a relationship of marriage, de facto union declared or not, in compliance with the obligations undertaken by the State under the Convention on the Elimination of All Forms of Discrimination against Women, Law No. 6968 of October 2, 1984, as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Act No. 7499, May 2, 1995." The term patrimonial violence in the Costa Rican legislation refers to the denial of property or heritage. Article 9 of the Guatemalan *Law against Femicide and other Forms of Violence against Women* (2008) states that no custom, tradition, culture or

religion may be invoked to justify violence against women or to exculpate any perpetrator of such violence.

B. Equal application of legislation to all women and measures to address multiple discrimination

Recommendation

Legislation should:

- protect all women without discrimination as to race, colour, language, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age or disability;
- recognize that women's experience of violence is shaped by factors such as their race, colour, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age, or disability, and include targeted measures for particular groups of women, where appropriate; and
- provide that survivors of violence against women should not be deported or subjected to other punitive actions related to their immigration status when they report such violence to police or other authorities.

Commentary

Legislation on violence against women has sometimes contained provisions, and/or been applied by the justice system in a manner, which discriminates between different types of women. The reform of the Turkish Penal Code in 2004 removed provisions that imposed lesser, or no, penalties in cases of violence against unmarried or non-virgin women, as compared to married or virginal women, and now ensures that the legislation protects all women equally.

Women's experience of violence, and of the justice system, are further shaped by their race, colour, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age, or disability. In many societies, women belonging to particular ethnic or racial groups experience gender-based violence as well as violence based on their ethnic or racial identity. Indigenous women are subject to various forms of violence, including intimate partner violence, custodial violence by police, and murder, and have often had negative experiences with the justice system. Some groups of women, such as immigrant women, may hesitate to seek legal redress for fear of adverse consequences and lack of knowledge or trust in the justice system. It is important that legislation, or subsidiary legislation, where necessary, make specific provision for the appropriate and sensitive treatment of women complainants/survivors of violence who suffer from multiple forms of discrimination. Title VI of the United States of America *Tribal Law and Order Bill* (2008), if passed, would enact specific provisions regarding the prosecution and prevention of domestic violence and sexual assault against Native American women.

C. Comprehensive legislative approach

Recommendation
Legislation should:
- be comprehensive and multidisciplinary, criminalizing all forms of violence against women, 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.

Commentary
A growing number of countries are adopting specific legislation and/or legislative provisions on violence against women. Many of these enactments focus primarily on criminalization. It is important that legal frameworks move beyond this limited approach to make effective use of a range of areas of the law, including civil, criminal, administrative and constitutional law, and address prevention of violence, and protection and support of survivors. For example, the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) incorporates provisions on sensitization, prevention and detection; the rights of survivors of violence; creates specific institutional mechanisms to address violence against women; introduces regulations under criminal law; and establishes judicial protection for survivors. It is also important that legislation incorporate a multidisciplinary approach to addressing violence against women. Reforms to the Swedish Penal Code regarding violence against women, introduced by the 'Kvinnofrid' package in 1998, emphasize the importance of collaboration between the police, social services and health care providers.

D. Gender-sensitive legislation

Recommendation
Legislation should:
- be gender-sensitive, not gender-blind.

Commentary
Gender-sensitivity recognizes the differences and specific needs of women and men. A gender-sensitive approach to legislation on violence against women acknowledges that women's and men's experiences of violence differ and that violence against women is a manifestation of historically unequal power relations between men and women.

There has been a long-standing debate as to the best way to ensure gender-sensitivity in legislation on violence. Gender-specific legislation has been deemed important, particularly in Latin America, as it acknowledges violence against women as a form of gender-based discrimination and addresses the particular needs of women

complainants/survivors. However, gender-specific legislation on violence against women does not allow for the prosecution of violence against men and boys and may be challenged as unconstitutional in some countries. A number of countries have adopted gender-neutral legislation, applicable to both women and men. However, such legislation may be subject to manipulation by violent offenders. For example, in some countries, women survivors of violence themselves have been prosecuted for the inability to protect their children from violence. Gender-neutral legislation has also tended to prioritize the stability of the family over the rights of the (predominantly female) complainant/survivor because it does not specifically reflect or address women's experience of violence perpetrated against them.

Some legislation combines gender-neutral and gender-specific provisions to reflect the specific experiences and needs of female complainants/survivors of violence, while allowing the prosecution of violence against men and boys. For example, Chapter 4, Section 4a of the Swedish Penal Code, as reformed by the 'Kvinnofrid' package in 1998, contains a neutral offence of "gross violation of integrity" which is constituted when a perpetrator commits repeated violations, such as physical or sexual abuse, against a person with whom they have, or have had, a close relationship, as well as the gender-specific offence of "gross violation of a woman's integrity" which is constituted by the same elements, when committed by a man against a woman. The Austrian *Code of Criminal Procedure*, since 2006, provides specific procedures and rights for women complainants/survivors of violence in the criminal justice process in order to avoid their secondary victimization.

2. Implementation

A. Amendment and/or removal of conflicting legal provisions

Recommendation
Legislation should:
- provide for the amendment and/or removal of provisions contained in other areas of law, such as family and divorce law, property law, housing rules and regulations, social security law, and employment law that contradict the legislation adopted, so as to ensure a consistent legal framework that promotes women's human rights and gender equality, and the elimination of violence against women.

Commentary
In order to be fully effective, the adoption of new legislation on violence against women should be accompanied by a review and amendment, where necessary, of all other relevant laws to ensure that women's human rights and the elimination of violence against women are consistently incorporated. For example, in conjunction with the *Organic Act on Integrated Protection Measures against Gender Violence* (2004) in

Spain, a number of other laws were amended in order to ensure consistency, such as the Worker's Statute, Social Offences and Sanctions Act, General Social Security Act, additional provisions of the National Budget Act, Civil Code, Criminal Code, Code of Civil Procedure, Code of Criminal Procedure, Act on Free Legal Aid, Organic Act regulating the Right of Education, General Advertising Act. In the United States of America, the *Personal Responsibility and Work Opportunity Reconciliation Act* (1996) created a Family Violence Option, which permits survivors of domestic violence to be exempted from certain employment restrictions related to receiving public assistance payments. The United States of America Department of Health and Human Services issued regulations regarding the implementation of the Family Violence Option in April 1999.

B. National action plan or strategy

Recommendation
Legislation should:
- where a current national action plan or strategy on violence against women does not already exist, mandate the formulation of a plan, which should contain a set of activities with benchmarks and indicators, to ensure a framework exists for a comprehensive and coordinated approach to the implementation of the legislation; or
- where a current national action plan or strategy exists, reference the plan as the framework for the comprehensive and coordinated implementation of the legislation.

Commentary
Legislation is most likely to be implemented effectively when accompanied by a comprehensive policy framework which includes a national action plan or strategy. The Uruguayan *Law for the Prevention, Early Detection, Attention to, and Eradication of Domestic Violence* (2002) mandates the design of a national plan against domestic violence. Article 46 of the Kenyan *Sexual Offences Act* (2006) requires that the relevant Minister prepare a national policy framework to guide the implementation and administration of the Act, and review the policy framework at least once every five years. The Mexican *Law on Access of Women to a Life Free of Violence* (2007) prioritizes the inclusion of measures and policies to address violence against women in the National Development Plan and obliges the Government to formulate and implement a national policy to prevent, address, sanction and eradicate violence against women.

C. Budget

Recommendation
Legislation should:
- mandate the allocation of a budget for its implementation by:

- creating a general obligation on Government to provide an adequate budget for the implementation of the relevant activities; and/or
- requesting the allocation of funding for a specific activity, for example, the creation of a specialized prosecutor's office; and/or
- allocating a specific budget to non-governmental organizations for a specified range of activities related to its implementation.

Commentary

Without adequate funding, legislation cannot be implemented effectively. As a result, legislation on violence against women increasingly contains provisions requiring budgetary allocation for its implementation. For example, the Mexican *Law on Access of Women to a Life Free of Violence* (2007) establishes obligations for the State and municipalities to take budgetary and administrative measures to ensure the rights of women to a life free of violence. In the United States of America, the *Violence Against Women Act* (1994), and its reauthorizations, provides a significant source of funding for non-governmental organizations working on violence against women. It is important that any budgetary allocation be based on a full analysis of funding required to implement all measures contained in the legislation.

D. Time limit on activating legislative provisions

Recommendation

Legislation should:

- provide a deadline regarding the length of time that may pass between its adoption and entry into force.

Commentary

Experience has shown that there may be significant delays between the adoption of legislation and its entry into force. In order to address this, some countries have included a legislative provision which specifies the date on which the relevant legislation, and all of its provisions, will come into force. For example, section 72 of the South African *Criminal Law (Sexual Offences and Related Matters) Amendment Act* (2007) provides that the majority of the Act is to take effect on 16 December 2007 and specifies that Chapters 5 and 6 of the Act is to take effect on 21 March 2008 and 16 June 2008, respectively.

E. Training and capacity-building for public officials

Recommendation

Legislation should mandate:

- regular and institutionalized gender-sensitivity training and capacity-building on violence against women for public officials;

- specific training and capacity-building for relevant public officials when new legislation is enacted, to ensure that they are aware of and competent to use their new duties; 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 violence against women

Commentary

It is critical to ensure that those mandated to implement legislation regarding violence against women, including police, prosecutors and judges, have an in-depth understanding of such legislation and are able to implement it in an appropriate and gender-sensitive manner. When public officials involved in the implementation of the law are not comprehensively trained regarding its content, there is a risk that the law will not be implemented effectively or uniformly. There have been many and varied efforts to train public officials, and/or to include capacity-building on violence against women in the official curricula for these professions. Such trainings and capacity-building efforts have been found to be most effective, and implemented rigorously, when they are mandated in law and developed in close collaboration with non-governmental organizations.

Article 47 of the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) requires the Government and the General Council of the Judiciary to ensure that training courses for judges and magistrates, prosecutors, court clerks, national law enforcement and security agents and coroners include specific training on sexual equality, non-discrimination for reasons of sex, and issues of violence against women. Under Article 7 of the Albanian *Law on Measures against Violence in Family Relations* (2006) the Ministry of the Interior is charged with training police to handle domestic violence cases, and the Ministry of Justice is responsible for training medico-legal experts on domestic violence and child abuse and training bailiffs on service of protection orders. Section 42 of the Philippines *Anti-Violence against Women and their Children Act* (2004) requires all agencies responding to violence against women and their children to undergo education and training on a) the nature and causes of violence against women and their children; b) legal rights and remedies of complainants/survivors; c) services available; d) legal duties of police officers to make arrests and offer protection and assistance; and e) techniques for handling incidents of violence against women and their children. Draft legislation on protection orders in the Netherlands, if passed, will mandate a training programme for police.

F. Protocols, guidelines, standards and regulations

Recommendation

Legislation should:

- require that the relevant Minister(s), in collaboration with police, prosecutors, judges, the health sector and the education sector, develop regulations, protocols, guidelines, instructions, directives and standards, including standardized forms, for the comprehensive and timely implementation of the legislation; and
- provide that such regulations, protocols, guidelines and standards be developed within a limited number of months following the entry into force of the legislation.

Commentary

Without the promulgation of regulations, protocols, guidelines and standards, legislation will not be implemented comprehensively and the training of officials will not produce effective results. Sections 66 and 67 of the South African *Criminal Law (Sexual Offences and Related Matters) Amendment Act* (2007) provide detailed procedures for the development of national directives, instructions and regulations. Section 47 of the Kenyan *Sexual Offences Act* (2006) provides for the promulgation of regulations. Article 21(3) of Georgia's *Law on Elimination of Domestic Violence, Protection of and Support to its Victims* (2006) directs the Ministry of Internal Affairs to develop and approve, within one month of publication of the law, a standardized form for the emergency protection order issued by police. The Bulgarian *Law on Protection against Domestic Violence* (2005) requires the Ministers of Interior, Justice, Health and others to develop domestic violence prevention and protection programmes within six months from the entry into force of the law.

G. Specialized police and prosecutorial units

Recommendation

Legislation/subsidiary legislation should provide:

- for the designation or strengthening of specialized police units and specialized prosecutor units on violence against women, and provide adequate funding for their work and specialized training of their staff; and
- that complainants/survivors should have the option of communicating with female police officers or prosecutors.

Commentary

Police authorities and prosecutors are of central importance to ensuring that perpetrators of violence are punished, especially with regard to investigating acts of violence against women, preserving evidence, and issuing indictments. The quality of police and prosecutor work is crucial in determining whether court proceedings are instituted or a person is convicted. However, it has been the experience in many countries that acts of violence against women are not investigated thoroughly or documented precisely, and that domestic violence continues to be regarded as a private matter and not a criminal offence, while complaints of sexual violence continue to be treated with scepticism.

There is evidence that specialized units are more responsive and effective in dealing with violence against women. Experience has shown that the establishment of such units may facilitate the development of expertise in this area and may result in an increase in the number of cases investigated and a better quality and more efficient process for the complainant/survivor. However, in some countries, experience indicates that establishment of such units may result in the marginalization of women's issues. It is therefore crucial that establishment of specialized units be accompanied by adequate funding and training of staff.

Special investigation services have been organized in many police stations in Italy to respond more adequately to women who report sexual violence. In Jamaica, a sex crimes unit has been established within the police force, with the objective of creating an environment that encourages women complainants/survivors to report incidents of sexual assault and child abuse; effectively investigating complaints of abuse; and offering counselling and therapy services. The *National Guidelines for Prosecutors in Sexual Offence Cases* (1998) of the Department of Justice in South Africa state that "a specialist prosecutor is the ideal person for this type of case."

H. Specialized courts

Recommendation

Legislation should:

- provide for the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of cases of violence against women; and
- ensure that officers assigned to specialized courts receive specialized training and that measures are in place to minimize stress and fatigue of such officers.

Commentary

Experiences of complainants/survivors with court personnel in regular courts suggests that such personnel frequently do not have the necessary gender-sensitivity or comprehensive understanding of the various laws that apply to violence against women cases; may not be sensitive to women's human rights; and may be overburdened with other cases, resulting in delays and increased costs to the complainant/survivor. Specialized courts exist in a number of countries, including Brazil, Spain, Uruguay, Venezuela, the United Kingdom, and a number of states in the United States of America. Such courts have been effective in many instances as they provide a stronger possibility that court and judicial officials will be specialized and gender-sensitive regarding violence against women, and often include procedures to expedite cases of violence against women.

The specialized integrated courts established by Title V of the *Organic Act on Integrated Protection Measures against Gender Violence* (2004) in Spain and article 14 of the *Maria da Penha Law* (2006) in Brazil deal with all legal aspects of cases regarding

domestic violence, including divorce and child custody proceedings and criminal proceedings. By streamlining and centralizing court processes, such integrated courts eliminate contradictory orders, improve complainant/survivor safety, and reduce the need for complainants/survivors to testify repeatedly. However, it is important to ensure that the complainant/survivor retains control over the proceedings and does not feel forced to take actions, such as divorce or separation, when she is not ready. The Spanish experience suggests that proceedings in specialized courts sometimes progress too rapidly for complainants/survivors and, as a result, some complainants/survivors withdraw from the process. It is also important to ensure that all relevant professionals are available in specialized courts. Sexual Offences Courts established as part of the anti-rape strategy in South Africa are staffed by a cadre of prosecutors, social workers, investigating officers, magistrates, health professionals and police.

I. Penalties for non-compliance by relevant authorities

Recommendation
Legislation should:
- provide for effective sanctions against relevant authorities who do not comply with its provisions.

Commentary
In order to ensure that officials charged with implementing legislation on violence against women fully adhere to their responsibilities, there is a need for legislation to provide for penalties for non-compliance. Article 5 of the Costa Rican *Criminalization of Violence against Women Law* (2007) states that public officials who deal with violence against women "must act swiftly and effectively, while respecting procedures and the human rights of women affected" or risk being charged with the crime of dereliction of duty. Articles 22, 23 and 24 of the Venezuelan *Law About Violence Against Women and the Family* (1998) provide penalties for authorities in centres of employment, education and other activities, health professionals, and justice system officials who do not undertake relevant actions within the required time frame.

3. Monitoring and evaluation

A. Specific institutional mechanism to monitor implementation

Recommendation
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, advocates, attorneys, police, prosecutors, judges, probation officers and service providers regarding complainants/survivors' access to the legal system and the effectiveness of remedies, including obstacles faced by particular groups of women; and
- the proposal of amendments to legislation if necessary; and

o mandate adequate funding for the mechanism.

Commentary

Careful and regular monitoring is critical to ensure that legislation is implemented effectively and does not have any adverse unanticipated effects. Monitoring of the implementation of legislation may reveal gaps in the scope and effectiveness of the law, the need for training of legal professionals and other stakeholders, lack of a coordinated response, and unanticipated consequences of the law for complainants/survivors, thereby identifying areas in need of legal reform. Monitoring is most effective when conducted by the Government in collaboration with non-governmental organizations, and with the involvement of complainants/survivors of violence and service providers, in order to ensure that evaluations are reflective of how the law is experienced on the ground.

A Special Inter-institutional Commission for Monitoring the Implementation of the Law against Domestic Violence, composed of members from Government and civil society, was formed following the enactment of the *Law on Domestic Violence* (1997) in Honduras. In 2004, the Commission proposed amendments to the law, including expansion of provisions regarding protection orders and criminalization of cases of repeated domestic violence. These amendments were approved by Congress and have been in effect since 2006. The Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides for the creation of two institutions. The Special Government Delegation on Violence against Women is charged with developing policies to address gender-based violence, promoting public awareness through national plans and campaigns, coordinating the efforts of different stakeholders, gathering data and conducting studies. The head of the Special Government Delegation is able to intervene in court proceedings to defend the rights of women. A second institution, the State Observatory on Violence against Women is charged with providing an annual report and ongoing advice to Government. In addition, the Government, in collaboration with the different regions, is to prepare a report evaluating the effectiveness of the Act three years after its entry into force and present it to the Parliament. Section 39 of the Philippines' *Anti-Violence against Women and their Children Act* (2004) provides for the creation of an Inter-Agency Council on Violence Against Women and Their Children to monitor the effectiveness of initiatives to address violence against women and develop programmes and projects to eliminate such violence.

The Uruguayan *Law for the Prevention, Early Detection, Attention to, and Eradication of Domestic Violence* (2002) provides for the creation of a National and Consultative Council in the Fight against Domestic Violence which is to promote a holistic approach

to addressing the needs of complainants/survivors of violence. In Indonesia, Presidential Decree Number 181/1998 established the National Commission on Violence Against Women (Komnas Perempuan) which is an independent body tasked with promoting the enforcement of women's human rights and eliminating violence against women in Indonesia. The Nigerian *Violence Prohibition Bill*, if enacted, would create a National Commission on Violence Against Women fully funded by the Government to, amongst other things, monitor and supervise the implementation of the provisions of the Act.

B. Collection of statistical data

Recommendation

Legislation should:

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

Commentary

The collection of data, including statistical data, is fundamental for monitoring the efficacy of legislation. This research should include compiling data on whether and when an abuser re-offends and whether such offences involve the same or a different victim. Despite progress in recent years, there remains an urgent need to strengthen the knowledge base on all forms of violence against women to inform legal development. Where possible, it is important to engage the national statistical office in the collection of statistical data.

Some countries have responded to the need for further data collection by mandating such activities in legislation. Italy's *Financial Law* (2007) created a National Observatory on Violence against Women and allocated €3 million per year for the next three years to the Observatory. The Guatemalan *Law against Femicide and other Forms of Violence against Women* (2008) obliges the national statistical office to compile data and develop indicators on violence against women. The Albanian *Law on Measures against Violence in Family Relations* (2006) obliges the Ministry of Labour, Social Affairs and Equal Opportunities to maintain statistical data on domestic violence levels. Articles 7 and 8 of the Polish *Law on Domestic Violence* (2005) require the Minister of Social Affairs to direct and fund research and analyses on domestic violence. The *Law on Access of Women to a Life Free of Violence* (2007) in Mexico mandates the creation of a national databank on cases of violence against women, including protection orders and the people subject to them. Draft legislation on domestic violence in Armenia, if passed, would require the Government to collect statistics, conduct research, monitor and fund counselling centres and shelters.

4. Definitions

A. Defining forms of violence against women

Recommendation

Legislation should:

- apply to all forms of violence against women, including but not limited to:
  - domestic violence;
  - sexual violence, including sexual assault and sexual harassment;
  - harmful practices, including early marriage, forced marriage, female genital mutilation, female infanticide, prenatal sex-selection, virginity testing, HIV/AIDS cleansing, so-called honour crimes, acid attacks, crimes committed in relation to bride-price and dowry, maltreatment of widows, forced pregnancy, and trying women for sorcery/witchcraft;
  - femicide/feminicide;
  - trafficking; and
  - sexual slavery; and
- recognize violence against women perpetrated by specific actors, and in specific contexts, including:
  - violence against women in the family;
  - violence against women in the community;
  - violence against women in conflict situations; and
  - violence against women condoned by the State, including violence in police custody and violence committed by security forces.

Commentary

Forms and manifestations of violence against women vary depending on the specific social, economic, cultural and political context. However, legislation regarding violence against women has predominantly addressed intimate partner violence. A number of countries have passed specific legislation addressing other forms of violence, such as the *Acid Crime Prevention Act* (2002) and *Acid Control Act* (2002) of Bangladesh, section 304B of the Indian Penal Code which criminalizes "dowry deaths", and the *Law on the Repression of the Practice of Female Genital Mutilation* (No. 3 of 2003) in the Republic of Benin. Other countries have passed legislation that addresses several forms of violence. For example, the Mexican *Law on Access of Women to a Life Free of Violence* (2007) addresses forms of violence in the family, in the workplace and educational institutions, in the community, in State institutions, and femicide. Femicide is an extreme form of violence that culminates in the murder of women and may include torture, mutilation, cruelty, and sexual violence.

Regardless of whether forms of violence are addressed in separate legislation or in one piece of legislation, a comprehensive legal framework must be applicable to each form, including measures for the prevention of violence, protection and support of the complainant/survivor, punishment of the perpetrator, and measures to ensure the thorough implementation and evaluation of the law.

B. Defining domestic violence

i. Comprehensive definition of types of domestic violence

Recommendation
Legislation should:
- include a comprehensive definition of domestic violence, including physical, sexual, psychological and economic violence.

Commentary
Legislation regarding domestic violence has tended to address physical violence only. However, as a more nuanced understanding of the nature of domestic violence has emerged, a number of countries have enacted and/or amended legislation to adopt definitions which include some or all of the following types of violence: physical, sexual, emotional and/or psychological, and patrimonial, property, and/or economic violence. For example, Chapter II of the Indian *Protection of Women from Domestic Violence Act* (2005) includes physical, sexual, verbal, emotional and economic abuse, and article 5 of the Brazilian *Maria da Penha Law* (2006) states that "domestic and family violence against women is defined as any action or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage."

In practice however, definitions of domestic violence that include psychological and economic violence may be problematic. Experience has shown that violent offenders may attempt to take advantage of such provisions by applying for protection orders claiming that their partner psychologically abuses them. Further, many women may not expect a strong justice system response to so-called acts of psychological or economic violence against them. In addition, psychological violence is very difficult to prove. It is therefore essential that any definition of domestic violence that includes psychological and/or economic violence is enforced in a gender-sensitive and appropriate manner. The expertise of relevant professionals, including psychologists and counsellors, advocates and service providers for complainants/survivors of violence, and academics should be utilized to determine whether behaviour constitutes violence.

ii. Scope of persons protected by the law

Recommendation
Legislation should apply at a minimum to:

- individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household.

Commentary

Laws on domestic violence have often applied only to persons in intimate relationships and, in particular, to married couples. Over time, there has been an expansion of legislation to include other complainants/survivors of domestic violence, such as intimate partners who are not married or in a cohabiting relationship, persons in family relationships and members of the same household, including domestic workers. The Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) defines domestic relationships broadly to include relationships with a spouse or former spouse, non marital relationships, non cohabiting relationships, romantic and sexual relationships, as well as relationships between family or household members, such as ascendants, descendents, persons related by blood, persons residing together and minors or disabled individuals under guardianship or custody. Article 5 of the Brazilian *Maria da Penha Law* (2006) includes violence committed in the "domestic unit", defined as the permanent space shared by people, with or without family ties; in the "family", defined as the community formed by individuals that are or consider themselves related, joined by natural ties, by affinity or by express will; and in any intimate relationship. The *Nigerian Violence Prohibition Bill*, if enacted, would define a domestic relationship broadly, so as to include spouses, former spouses, persons in an engagement, dating or customary relationship, parents of a child, members of the family, or residents of the same household. The Indonesian *Law Regarding the Elimination of Violence in the Household* (Law No. 23 of 2004) extends to domestic workers.

In Austria, the requirement that complainants/survivors prove their relationship with the perpetrator in order to be protected under the law has sometimes resulted in the re-victimization of the complainant/survivor. Perpetrators have denied the existence of a relationship in order to avoid being the subject of a protection order. In response, complainants/survivors have been requested to prove that a relationship existed, which has led to questions regarding what constitutes a 'relationship', including whether the complainant/survivor must prove she had sex with the perpetrator in order to qualify for protection.

C. Defining sexual violence

i. Defining a broad offence of sexual assault incorporating rape, including marital rape

Recommendation

Legislation should:

- define sexual assault as a violation of bodily integrity and sexual autonomy;
- replace existing offences of rape and "indecent" assault with a broad offence of sexual assault graded based on harm;
- provide for aggravating circumstances including, but not limited to, the age of the survivor, the relationship of the perpetrator and survivor, the use or threat of violence, the presence of multiple perpetrators, and grave physical or mental consequences of the attack on the victim;
- remove any requirement that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize re-victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:
  - requires the existence of "unequivocal and voluntary agreement" and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or
  - requires that the act take place in "coercive circumstances" and includes a broad range of coercive circumstances; and
- specifically criminalize sexual assault within a relationship (i.e., "marital rape"), either by:
  - providing that sexual assault provisions apply "irrespective of the nature of the relationship" between the perpetrator and complainant; or
  - stating that "no marriage or other relationship shall constitute a defence to a charge of sexual assault under the legislation."

Commentary

Sexual violence has often been addressed in the problematic framework of morality, public decency and honour, and as a crime against the family or society, rather than a violation of an individual's bodily integrity. Positive progress has been made in addressing this issue. A number of Latin American countries, including Argentina, Bolivia, Brazil and Ecuador, have revised their penal codes to reflect sexual violence as a violation of the complainant/survivor, instead of as a threat to her "honour" and "morality". The reform of the Turkish Penal Code in 2004 defined sexual violations as "crimes against the individual" instead of "crimes against moral customs and society" and eliminated all references to "morality", "chastity" and "honour", as did the Kvinnofrid reforms to the Swedish Penal Code in 1998.

Rape has been the main 'form' of sexual violence addressed by criminal law and definitions of rape often focused on proof of penetration. These definitions do not account for the full range of sexual violations experienced by women and the impact of such violations on the complainant/survivor. For this reason, some countries have instead included in their criminal law a broad definition of 'sexual assault' which encompasses the offence formerly classified as rape and is not dependent upon proof of penetration.

For example, Canada's Criminal Code provides for the graded offences of sexual assault (section 271), sexual assault with a weapon, threats to a third party, or causing bodily harm (section 272), and aggravated sexual assault, wherein the perpetrator wounds, maims, disfigures or endangers the life of, the complainant (section 273). Article 102 of the Turkish Penal Code (2004) defines sexual assault as an offence of violating the bodily integrity of another person by means of sexual conduct; rape as the offence of violating the bodily integrity of another person, including marriage partner, by means of inserting an organ or an another object into the body.

Definitions of rape and sexual assault have evolved over time, from requiring use of force or violence, to requiring a lack of consent. For example, Canada's Criminal Code contains a positive consent standard which states: "consent" means, for the purposes of this section, the voluntary agreement of the complainant to engage in the sexual activity in question. The *Sexual Offences Act* (2004), in the United Kingdom, strengthened and modernized the law on sexual offences, improved preventative measures and the protection of individuals from sexual offenders. Three key provisions from the Act are: a statutory definition of consent, a test of reasonable belief in consent and a set of evidential and conclusive presumptions about consent and the defendant's belief in consent. However, experience has shown that definitions of sexual assault based on a lack of consent may, in practice, result in the re-victimization of the complainant/survivor by forcing the prosecution to prove beyond reasonable doubt that the complainant/survivor did not consent. In an attempt to avoid such re-victimization, some countries have developed definitions of rape which rely on the existence of certain circumstances, rather than demonstrating a lack of consent. For example, the definition of rape under Namibia's *Combating of Rape Act* (2000) requires the existence of certain "coercive circumstances", instead of proof of lack of consent. A similar definition has been adopted in the Lesotho *Sexual Offences Act* (2003). In instances where a definition based on "coercive circumstances" is adopted, it is important to ensure that the circumstances listed are expansive, and do not revert to an emphasis on use of force or violence.

Historically, rape and sexual assault were not criminalized when committed within the context of an intimate relationship. While the concept of rape within intimate relationships remains highly problematic in many countries, an increasing number of countries are removing exemptions for rape/sexual assault within an intimate relationship from their penal codes and/or enacting specific provisions to criminalize it. Lesotho, Namibia, South Africa and Swaziland have all criminalized marital rape. The Namibian *Combating of Rape Act* (2000) does so by stating: "No marriage or other relationship shall constitute a defence to a charge of rape under this Act". In 2002, the Supreme Court of Nepal in the case of *Forum for Women, Law and Development (FWLD) vs. His Majesty's Government/Nepal (HMG/N*) found the marital rape exemption to be unconstitutional and contrary to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

In 2003, the introduction of the *Criminal Code (Sexual Offences and Crimes against Children) Act 2002* in Papua New Guinea abolished marital immunity in relation to rape.

ii. Defining sexual harassment

Recommendation
Legislation should:

- criminalize sexual harassment;
- recognize sexual harassment as a form of discrimination and a violation of women's human rights with health and safety consequences;
- define sexual harassment as unwelcome sexually determined behaviour in both horizontal and vertical relationships, including in employment (including the informal employment sector), education, receipt of goods and services, sporting activities, and property transactions; and
- provide that unwelcome sexually determined behaviour includes (whether directly or by implication) physical conduct and advances; a demand or request for sexual favours; sexually coloured remarks; displaying sexually explicit pictures, posters or graffiti; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Commentary
Sexual harassment has traditionally been associated solely with labour-related offences and defined as occurring only in the context of unequal power relations (such as boss against employee). As a result, sexual harassment has often been dealt with in countries' labour codes and only applied to those who experience such behaviour in the formal employment sector. Over time, countries have acknowledged these limitations and begun to address sexual harassment in a more comprehensive manner and in various areas of the law, such as anti-discrimination law, and criminal law. The *Anti-Discrimination Act* (1977) of the State of New South Wales, Australia, provides that sexual harassment is against the law when it takes place in employment; educational institutions; receipt of goods or services; renting or attempting to rent accommodation; buying or selling land; and sporting activities. In Turkey, one of the major reforms to the Penal Code in 2004 was the criminalization of sexual harassment. In Kenya, sexual harassment is covered in three laws: section 23 of the *Sexual Offences Act* (2006) (criminal offence for any person in a position of authority or holding public office), section 6 of the *Employment Act* (2007) (harassment by employers or co-workers), and section 21 of the *Public Officer Ethics Act* (2003) (harassment within public service and provision of public services). In the case of *Vishaka v State of Rajasthan & Ors AIR* 1997 S.C.3011, the Supreme Court of India applied articles 11, 22, and 23 of the Convention on the Elimination of All Forms of Discrimination against Women, as well as general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, and the relevant sections of the Beijing Platform for Action (pertaining to promotion of health and safety

in work), in order to create a legally binding definition of sexual harassment, invoking a broad definition of the 'workplace'.

5. Prevention

A. Incorporation of provisions on prevention of violence against women

Recommendation

Legislation should prioritize prevention of violence against women and should include provisions, as elaborated below in parts 5.B to 5.D of the framework, on the following measures to prevent violence against women:

- awareness-raising activities regarding women's human rights, gender equality and the right of women to be free from violence;
- 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 violence against women.

Commentary

Early legislative responses to violence against women tended to focus solely on criminalization and thus did not attempt to address the root causes of violence against women. Over time, however, the importance of including preventive measures in legislation has been increasingly emphasized. The recently adopted *Law against Femicide and other Forms of Violence against Women* (2008) in Guatemala states that the Government is responsible for inter-agency coordination, the promotion and monitoring of awareness-raising campaigns, generating dialogue and promoting public policies to prevent violence against women. Article 8 of the Brazilian *Maria da Penha Law* (2006) provides for integrated prevention measures, including encouraging the communications media to avoid stereotyped roles that legitimize or encourage domestic and family violence, public educational campaigns, and emphasis, in educational curricula at all levels, on human rights and the problem of domestic and family violence against women. Chapter II of the Venezuelan *Law About Violence against Women and the Family* (1998) provides for policies on prevention of violence and assistance to survivors. The Supreme Court of India, in the case of *Vishaka v State of Rajasthan & Ors AIR* 1997 S.C.3011, required employers to ensure that appropriate conditions be established in respect of work, leisure, health and hygiene in order to prevent sexual harassment within the workplace. Italy's draft bill on *Measures of prevention and repression of the crimes against the person within the family, sexual orientation, gender and every other cause of discrimination*, if passed, would emphasize policies of prevention.

B. Awareness-raising

Recommendation

Legislation should mandate government support and funding for public awareness-raising campaigns on violence against women, including:

- general campaigns sensitizing the population about 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 violence against women and the remedies they contain.

Commentary

Public awareness-raising campaigns are critical to expose and convey the unacceptability of violence against women. They should convey the message of zero tolerance for violence against women, include the promotion of women's human rights, emphasize societal condemnation of discriminatory attitudes which perpetuate violence against women, and address attitudes that stigmatize complainants/survivors of violence. They are also an important tool for informing women complainants/survivors about their rights and about existing laws and the remedies they contain. In many countries, non-governmental organizations play a key role in awareness-raising regarding the unacceptability of violence against women, especially through broad coalition building and effective public and media outreach. Many governments have also undertaken awareness-raising campaigns, often in collaboration with non-governmental organizations and international organizations.

Article 3 of the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides for the launch of a National Sensitization and Prevention Plan regarding Violence against Women targeting both men and women in order to raise awareness of values based on respect for human rights and the equality of men and women. The Plan will be overseen by a Commission whose members will include survivors, members of relevant institutions, professionals working to address violence against women, and experts on the issue. Article 11 of the *Protection of Women from Domestic Violence Act* (2005) of India directs the Central Government and every State Government to take measures to ensure that the provisions of the Act are given wide publicity through public media, including television, radio and print media, at regular intervals.

C. Educational curricula

Recommendation

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.

Commentary

One of the most effective entry points at which discriminatory attitudes regarding gender equality and violence against women can be challenged is the educational system. Initiatives to prevent violence against women will be more effective when derogatory stereotypes and discriminatory attitudes toward women are eliminated from educational curricula and when content promoting women's human rights and gender equality, and condemning violence against women is incorporated at all levels of education. Chapter I of the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) focuses on the promotion of gender equality and peaceful conflict resolution at different levels of education, including through the training of educational professionals. Article 6 of the Act requires that education authorities ensure that sexist and discriminatory stereotypes are removed from all educational materials. As a result of this provision, many books included in educational curricula have been revised. The Mexican *Law on Access of Women to a Life Free of Violence* (2007) requires the development of educational programmes at all levels of schooling that promote gender equality and a life free of violence for women. The Chilean *Law on Intrafamily Violence* (1994) states in Article 3(a) that school curricula should include content about intrafamily violence, including how to modify behaviours that enhance, encourage or perpetuate such violence.

D. Sensitization of the media

Recommendation

Legislation should:

- encourage the sensitization of journalists and other media personnel regarding violence against women.

Commentary

Media representations significantly influence societal perceptions of acceptable behaviour and attitudes. Training journalists and other media personnel on women's human rights and the root causes of violence against women may influence the way in which the issue is reported and thereby influence societal attitudes. The Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides in article 14 that "[t]he communications media shall work for the protection and safeguarding of sexual equality, avoiding any discrimination between men and women" and that "[r]eports concerning violence against women, within the requirements of journalistic objectivity, shall do the utmost to defend human rights and the freedom and dignity of the female victims of gender violence and their children." Article 8 of the

Brazilian *Maria da Penha Law* (2006) calls for the communications media to avoid stereotyped roles that legitimize or encourage domestic and family violence.

6. Protection, support, and assistance to complainants/survivors of violence against women

A. Comprehensive and integrated support services

Recommendation

Legislation should:

- oblige the State to provide funding for, and/or contribute to establishing, comprehensive and integrated support services to assist survivors of violence;
- state that all services for women survivors of violence should also provide adequate support to the women's children;
- state that the location of such services should allow equitable access to the services, in particular by urban and rural populations; and
- where possible, establish at least the following minimum standards of availability of support services for complainants/survivors:
  - one national women's 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 women's advocacy and 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 particular groups of women (such as specialized services for immigrant survivors of violence, for survivors of trafficking in women or for women who have suffered sexual harassment at the work place), where appropriate;
  - one rape crisis centre for every 200,000 women; and
  - access to health care, including reproductive health care and HIV prophylaxis.

Commentary

Survivors of violence against women require timely access to health care and support services to respond to short-term injuries, protect them from further violations, and address longer-term needs. In many countries, such services have not been mandated by law. As a result, they are often provided by non-governmental organizations with limited financial means and with unpredictable funding from Government, resulting in limitations to availability. As a consequence, many women who have experienced violence do not receive support services, or receive services that are insufficient.

However, while the State can play an important role in establishing and funding services, it is often not the most appropriate body to run the services. Where possible, services should be run by independent and experienced women's non-governmental organizations providing gender-specific, empowering and comprehensive support to women survivors of violence, based on feminist principles.

To date, the majority of services have been targeted towards survivors of intimate partner violence, while experience has shown that survivors of all forms of violence against women require access to such services. For example, in Honduras, shelters run by non-governmental organizations for survivors of domestic violence have also been approached by survivors of sexual violence.

States are increasingly providing legislative mandates for the establishment of services. Article 17 of the Guatemalan *Law against Femicide and other Forms of Violence against Women* (2008) requires the Government to guarantee survivors of violence access to integrated service centres, including by providing financial resources. The Mexican *Law on Access of Women to a Life Free of Violence* (2007) requires the State to support the installation and maintenance of shelters. In Turkey, the *Local Administration Law* requires the creation of shelters in municipalities with more than 50,000 inhabitants. Under the *Violence Protection Act* (1997) in Austria, all provinces must establish intervention centres where complainants/survivors of domestic violence are proactively offered assistance after interventions by the police. The intervention centres are run by women's non-governmental organizations and financed by the Ministry of the Interior and the Ministry of Women on the basis of five-year contracts.

B. Rape crisis centres

Recommendation

Legislation should:

- provide for immediate access to comprehensive and integrated services, including pregnancy testing, emergency contraception, abortion services, treatment for sexually transmitted diseases, treatment for injuries, post-exposure prophylaxis and psycho-social counselling, for complainants/survivors of sexual violence at the expense of the State; and
- state that access to such services should not be conditional upon the complainant/survivor reporting the violation to the police.

Commentary

Survivors of sexual violence require immediate access to comprehensive and integrated services. Examples of such services which have been developed over time by both governments and non-governmental organizations include rape crisis centres in the United States of America and Germany; one stop centres in Malaysia; and women friendly centres attached to hospitals in India. In some countries, access to services

remains conditional upon the survivor reporting the relevant violation to the police. Such a requirement is problematic in that it may deter women from seeking medical and psychological assistance. The Philippines' *Rape Victims Assistance Act* (1998) requires the establishment of a rape crisis centre in every province or city. However, as it does not mandate the allocation of relevant funds, local governments have found it difficult to establish such centres.

C. Support for the survivor in her employment

Recommendation
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.

Commentary
Some survivors of violence against women have lost employment because they missed work due to injuries and other consequences of the violence, including the need to find housing or go to court. Article 21 of the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides various employment and social security rights for survivors of violence, including the right to reduce or reorganize working hours. Under Article 43 of the Philippines' *Anti-Violence against Women and their Children Act* (2004), survivors are entitled to take a paid leave of absence up to ten days in addition to other paid leaves. Following amendments to the Honduras *Domestic Violence Act* in 2006, both public and private sector employers are required to grant permission to employees to attend related programmes, including self-support groups for survivors and re-education sessions for perpetrators.

D. Housing rights of the survivor

Recommendation
Legislation should:

- prohibit discrimination in housing against survivors of violence, including by prohibiting landlords from evicting a tenant, or refusing to rent to a prospective tenant, because she is a survivor of violence; and
- permit a survivor to break her lease without penalty in order to seek new housing.

Commentary
Violence against women directly affects survivors' housing. In many instances, survivors of violence have remained in situations where they are vulnerable to abuse due to an inability to find appropriate accommodation. Survivors of violence who are tenants are often evicted from housing and discriminated against in housing applications. The United

States of America *Violence Against Women and Department of Justice Reauthorization Act* (2005) introduced new provisions and programmes to provide survivors of violence further housing rights. The Act amended various laws to ensure that survivors of domestic violence would not be evicted from or denied public housing because they are survivors. It also provided funding for educating and training public housing agency staff, developing improved housing admissions and occupancy policies and best practices, and improving collaboration between public housing agencies and organizations working to assist survivors of violence. In Austria, the City of Vienna assists women who have suffered violence and become homeless to rent affordable flats. Since 2001, immigrants have also been eligible for such housing.

E. Financial support for the survivor

Recommendation

Legislation should:

- provide for efficient and timely provision of financial assistance to survivors in order to meet their needs.

Commentary

Survivors of violence against women incur significant short-term and long-term financial costs related pain and suffering, reduced employment and productivity, and expenditure on services. It is important that survivors of violence have access to financial assistance outside of protection order (referred to in part 8.C), family law (referred to in part 10), and sentencing proceedings (referred to in part 9.E) due to the uncertainty regarding the duration of such proceedings and the financial assistance they may offer. Under sections 1061JA and 1061 JH of Australia's *Social Security Act*, as amended in 2006, survivors of domestic violence may qualify for a "crisis payment" from the federal welfare agency "Centrelink", where they have left the home because of violence, and/or where they remain in the home following the departure of the perpetrator and are in severe financial hardship. Depending on the legal context, such assistance could be made available through a trust fund for survivors of violence to which both the State and other actors may contribute. Section 29 of the Ghanaian *Domestic Violence Act* (2007) establishes a Victims of Domestic Violence Support Fund. The fund receives voluntary contributions from individuals, organizations and the private sector; money approved by Parliament; and money from any other source approved by the Minister of Finance. The money from the Fund is used for a variety of purposes, including the basic material support of victims of domestic violence; any matter connected with the rescue, rehabilitation and reintegration of victims of domestic violence; the construction of shelters for survivors of domestic violence; and training and capacity building for persons connected with the provision of shelter, rehabilitation and reintegration.

F. Independent and favourable immigration status for survivors of violence against women

Recommendation
Legislation should:
- allow immigrants who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator.

Commentary
Women survivors of domestic violence or violence in the workplace whose immigration status in a country is tied to their marital, family or employment status are often reluctant to report such violence to the police. Over time, States have developed legislation and/or subsidiary legislation which provides for the right of such survivors to apply for immigration status independently of the perpetrator. For example, the United States of America's *Violence Against Women Act* (1994) and its reauthorizations, allows survivors of domestic violence whose immigration status depends on that of a citizen/lawful permanent resident of the United States of America to self-petition for their own immigration status under certain circumstances. The Act also permits domestic violence survivors who meet certain requirements to obtain suspension of deportation proceedings and become lawful permanent residents. The Canadian *Immigration and Refugee Protection Act* (2002) allows survivors of domestic violence to apply for permanent residence status irrespective of whether their spouse supports the application, as does the Swedish *Aliens Act* (2005). In the Netherlands, proof of sexual or other violence within a relationship constitutes separate grounds for granting residence status for persons in possession of a dependent residence permit. The Netherlands' *Interim Supplement* to the *Aliens Act Implementation Guidelines* (TBV 2003/48) states that if a girl is at risk of female genital mutilation, she and her family may be granted residence status in the Netherlands. The *Domestic Violence Concession Rules* in the United Kingdom permit a woman whose residency status is dependent on a perpetrator of violence to apply for leave to remain in the United Kingdom indefinitely.

G. Restrictions on international marriage brokers and ensuring the rights of "mail-order brides"

Recommendation
Legislation should include:
- measures to minimize the risks posed by international marriage brokers, including: imposing restrictions on the operations of international marriage brokers, restricting abusive men's ability to use international marriage brokers, ensuring that women who are recruited through international marriage brokers are above the age of majority and have given voluntary and informed consent, and providing every recruited woman with information about her prospective spouse and her legal rights; and

- the right to divorce and to obtain independent immigration status for international brides who are survivors of violence.

Commentary

The international marriage broker industry poses a number of dangers to women. By "marketing" women from economically disadvantaged countries as brides for men in wealthy countries, the women frequently find themselves in situations of isolation and powerlessness, where they are dependent on a partner whom they barely know, and unaware of their legal rights. Because of their profit motive and the fact that their fees are paid by men, international marriage brokers often have an incentive to promote the satisfaction of men above the well-being of women. These factors combine to create a serious risk of domestic violence for women recruited through international marriage brokers.

Both sending and receiving countries of international brides have taken legislative action to address this issue. The Philippines' *Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail Order Basis and other Similar Practices* (1990), amongst other things, makes it unlawful for a person or company to establish or carry on a business which has as its purpose the matching of Filipino women for marriage to foreign nationals either on a mail order basis or personal introduction; advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier or any propaganda material calculated to promote the prohibited acts. The United States of America's *International Marriage Broker Regulation Act* (2005) requires that a foreign woman be provided with information about her prospective spouse's criminal and marital background as well as information about the rights and resources available to domestic violence survivors in the United States of America. It requires international marriage brokers to obtain a woman's written consent before distributing information about her and forbids the distribution of information about anyone under the age of eighteen. It also restricts the ability of a petitioner in the United States of America to seek visas for a series of fiancées.

7. Investigation and legal proceedings

A. Duties of police officers

Recommendation

Legislation should provide that police officers should:

- respond promptly to every request for assistance and protection in cases of violence against women, even when the person who reports such violence is not the complainant/survivor;
- assign the same priority to calls concerning cases of violence against women as to calls concerning other acts of violence, and assign the same priority to calls

concerning domestic violence as to calls relating to any other form of violence against women; and

- upon receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the complainant/survivor, 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/survivor of her rights;
  - filling out and filing an official report on the complaint;
  - providing or arranging transport for the complainant/survivor to the nearest hospital or medical facility for treatment, if it is required or requested;
  - providing or arranging transport for the complainant/survivor and the complainant/survivor's children or dependents, if it is required or requested; and
  - providing protection to the reporter of the violence.

Commentary

Police play a crucial role in any coordinated response to violence against women. However, survivors/complainants of violence against women often hesitate to call police because they fear that they might not be taken seriously or be considered to be lying and may have little confidence in the justice system. Laws increasingly include provisions on the duties of police officers in cases of violence against women. Article 7 of Ghana's *Domestic Violence Act* (2007) states that police officers must "respond to a request by a person for assistance from domestic violence and shall offer the protection that the circumstances of the case or the person who made the report requires, even when the person reporting is not the victim of the domestic violence" and article 8 goes on to elaborate upon the duties of the officer. Section 30 of the Philippine's *Anti-Violence against Women and their Children Act* (2004) imposes a fine against village officials or law enforcers who fail to report an incident of violence.

B. Duties of prosecutors

Recommendation

Legislation should:

- establish that responsibility for prosecuting violence against women lies with prosecution authorities and not with complainants/survivors of violence, regardless of the level or type of injury;
- require that complainants/survivors, 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; and
- release of the perpetrator from pre-trial detention or from jail; and

- require that any prosecutor who discontinues a case of violence against women explain to the complainant/survivor why the case was dropped.

Commentary

Given the fear and intimidation to which complainants/survivors are subjected, it is important that public prosecutors, or their equivalent, be assigned to cases of violence against women. Such prosecutor involvement was one of the central elements of the original legal reform on domestic violence in the United States of America. In Austria *ex officio* prosecution is exercised in cases regarding all forms of violence, regardless of the level of injury. In some countries where cases of violence against women must be pursued by the complainant/survivor by private prosecution, advocates are seeking amendments to legislation in order to mandate increased prosecutor involvement.

Lack of information and/or misinformation regarding the legal process can be intimidating for the complainant/survivor; preclude her from engaging fully and completely in the case; deter her from continuing with the prosecution, particularly in cases of domestic violence; and threaten her safety. If there is a change in the perpetrator's bail and/or imprisonment status and the complainant/survivor is not informed, the complainant/survivor may not be able to keep herself safe. If the complainant/survivor is not informed of relevant court dates and proceedings, she may not understand what is happening and/or miss important dates. Section 9 of Namibia's *Combating of Rape Act* (2000) places duties on prosecutors to ensure that the complainant/survivor receives all information pertaining to the case. Reforms to the *Code of Criminal Procedure* in Austria in 2006 introduced the right of the complainant/survivor to be informed if the perpetrator is released from arrest. The Spanish *Act Regulating the Protection Order for Victims of Domestic Violence* (2003) provides complainants/survivors with the right to be constantly informed about their legal proceedings, including any change in the process and the eventual release of the offender. Section 29 of the Philippines *Anti-Violence against Women and their Children Act* (2004) requires prosecutors and court personnel to inform the complainant/survivor of her rights and remedies.

Cases of violence against women are often dropped without any explanation to the complainant/survivor. In order to address this issue, various countries have introduced provisions in legislation, such as Instruction 8/2005 of the State's General Prosecutor Office in Spain which requires prosecutors to explain to complainants/survivors why their case has been dropped.

C. Pro-arrest and pro-prosecution policies

Recommendation
Legislation should:
- provide for the application of pro-arrest and pro-prosecution policies in cases of violence against women where there is probable cause to believe that a crime has occurred.

Commentary
Despite education and training of police officers and prosecutors, many members of these professions continue to believe that violence against women, and particularly domestic violence, does not constitute a crime. Police officers often caution or reprimand perpetrators of violence against women, rather than taking more serious action, such as arrest. In many instances, prosecutors do not institute proceedings in cases of violence against women due to a perception that complainants/survivors in such cases cannot be trusted and/or due to difficulties in gathering evidence. Various policies have been adopted to address these issues, including mandatory arrest and prosecution, pro-arrest and pro-prosecution, and absent-survivor prosecution policies.

Mandatory arrest policies require that a police officer arrest the perpetrator if their assessment of a situation gives them probable cause to believe that a crime has occurred. If such a policy is in place, police may not impose an alternative penalty and the case must be prosecuted without any exception. Such policies exist in a number of countries, including various countries in the Pacific Islands. Under the *Sexual Offences Act* (2006) in Kenya, police must file each charge and only the Attorney General can withdraw the case. If passed, the Nigerian Violence *Prohibition Bill* would provide that: "No prosecutor shall (a) refuse to institute a prosecution; or (b) withdraw a charge, in respect of a contravention of section 18 (1), unless he or she has been authorised thereto, whether in general or in any specific case, by the Director of Public Prosecutions." While some have welcomed the vigour of such policies, others are concerned by the removal of agency from the complainant/survivor, particularly in cases of domestic violence.

An alternative approach is pro-arrest and pro-prosecution policies which are more flexible than the mandatory approach and retain a level of agency of the complainant/survivor, while ensuring that the issue is treated seriously by police and prosecutors. In Spain, there is a pro-arrest and detention policy in cases where police deem there to be severe risk to the complainant/survivor or when the police witness the offender committing the crime. In Honduras, a variation of this policy was introduced by amendments to the *Law on Domestic Violence* in 2006: if a complainant/survivor wishes to drop a case, the judge cannot close it without an investigation of the reasons for which the complainant/survivor wishes to drop the case.

Mandatory and pro-arrest policies present the potential problem that victims may be arrested at the scene of an assault if a police officer is unable to identify the primary aggressor (the victim may have defended herself against assault causing injury to the

offender). In response to this problem, strategies to determine the primary aggressor and corresponding police training modules have been developed in the United States of America.

D. Prohibition of mediation

Recommendation
Legislation should:
- explicitly prohibit mediation in all cases of violence against women, both before and during legal proceedings.

Commentary
Mediation is promoted or offered as an alternative to criminal justice and family law processes in several countries' laws on violence against women. However, a number of problems arise when mediation is utilized in cases of violence against women. It removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability. An increasing number of countries are prohibiting mediation in cases of violence against women. For example, the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) forbids mediation of any kind in cases of violence against women.

E. Encouraging timely and expedited proceedings

Recommendation
Legislation should:
- provide for timely and expeditious legal proceedings and encourage fast-tracking of cases of violence against women, where appropriate.

Commentary
Delays in the conduct of trials may increase the risk to the complainant of retaliation, particularly if the perpetrator is not in police custody. In addition, delays often deter the complainant from proceeding with prosecution. In India, the sexual harassment complaint committees mandated by the Supreme Court in *Vishaka v. State of Rajasthan AIR* 1997 S.C.3011 to address sexual harassment complaints are required to establish a time-bound process. In a number of countries, including Spain, South Africa, the United Kingdom, and various states in the United States of America, procedures have been introduced to expedite (i.e. "fast-track") cases regarding violence against women in the courts. The Spanish *Organic Act on Important Reviews of the Code of Criminal Procedure* (2002) introduced fast trials for specific offences and enables cases of domestic violence to be judged within 15 days of the offence. However, it is important to ensure that the complainant/survivor retains control over the proceedings and does not feel forced to take

actions, such as divorce or separation, when she is not ready. The Spanish experience suggests that proceedings in specialized courts sometimes progress too rapidly for complainants/survivors and, as a result, some complainants/survivors withdraw from the process. It is also important to ensure that all relevant professionals are available in specialized courts.

F. Free legal aid, interpretation, and court support, including independent legal counsel and intermediaries

Recommendation

Legislation should ensure that complainants/survivors have the right to:

- free legal aid in all legal proceedings, especially criminal proceedings, in order to ensure access to justice and avoid secondary victimization;
- free court support, including the right to be accompanied and represented in court by a specialized complainants/survivors' service and/or intermediary, free of charge, and without prejudice to their case, and access to service centres in the courthouse to receive guidance and assistance in navigating the legal system; and
- free access to a qualified and impartial interpreter and the translation of legal documents, where requested or required.

Commentary

Legal aid, including independent legal advice, are critical components of complainants/survivors' access to, and understanding of, the legal system and the remedies to which they are entitled. Legal representation has proven to increase the likelihood of a positive outcome for the complainant/survivor in the legal process. For example, monitoring of Bulgaria's *Law on Protection against Domestic Violence* (2005) has shown that, while a survivor does not need a lawyer to file for a protection order, her application is more likely to be successful with legal representation. Language barriers are a primary obstacle to immigrant survivors of violence, including migrant workers and survivors of domestic violence, when they are seeking safety for themselves and their children, and the accountability of their abusers.

Many good practices have emerged in legislating for the provision of free legal aid and the right of the complainant/survivor to independent legal counsel and support. For example, the rape crisis centres established under the Philippines *Rape Victims Assistance Act* (1998) provide free legal aid. Article 21 of the Guatemalan *Law against Femicide and other Forms of Violence against Women* (2008) obliges the Government to provide free legal assistance to survivors. In Armenia, draft legislation mandates Government funding for counselling centres and shelters to provide free psychological, medical, legal and social assistance to domestic violence survivors. In various jurisdictions in the United States of America, Government-funded domestic abuse service centres are located in court buildings to provide efficient and easy access to legal advice and other services, in various languages, for domestic violence complainants/survivors. In Spain, any woman

complainant/survivor of violence has the right to specialized and immediate legal assistance, including free legal aid to litigate in all administrative processes and judicial procedures directly or indirectly associated with the violence suffered.

In Kenya, the *Sexual Offences Act* (2006) provides for a third party to bring a case where the complainant/survivor is unable to go to the court by herself. The *Criminal Procedure Code* (1999) of Honduras provides for the possibility of the complainant/survivor being represented by a duly established organization, such as a women's rights organization. For example, the Center for Women's Rights in Honduras has acted on behalf of women complainants/survivors, in coordination with the public prosecutor in sexual violence cases.

In the United Kingdom and the United States of America, the prosecution has the responsibility to obtain and pay for an interpreter for complainants/survivors of domestic violence, once the need for one is recognized.

G. Rights of the complainant/survivor during legal proceedings

Recommendation

Legislation should:

- guarantee, throughout the legal process, the complainant/survivor's right to:
  - decide whether or not to appear in court or to submit evidence by alternative means, including drafting a sworn statement/affidavit, requesting that the prosecutor present relevant information on her behalf, and/or submitting taped testimony;
  - when appearing in court, give evidence in a manner that does not require the complainant/survivor to confront the defendant, including through the use of in-camera proceedings, witness protection boxes, closed circuit television, and video links;
  - 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;
  - testify only as many times as is necessary;
  - request closure of the courtroom during proceedings, where constitutionally possible; and
  - a gag on all publicity regarding individuals involved in the case, with applicable remedies for non-compliance; and
- cross-reference witness protection legislation, where it exists.

Commentary

Legal proceedings often re-victimize complainants/survivors. It is therefore important to ensure that legal proceedings are conducted in a manner that protects the safety of the complainant/survivor and provides her with options for her participation in the process.

Namibia's *Combating of Rape Act* (2000) stipulates that the complainant has the right to attend at court personally, or to request that the prosecutor present the relevant information on her behalf if the accused has applied for bail. Section 5 of the *Rape Victim Assistance and Protection Act* (1998) in the Philippines provides for closed-door investigation, prosecution or trial and for non-disclosure to the public of the name and personal circumstances of the offended party and/or the accused, or any other information tending to establish their identities. The *Domestic Violence Act* (2007) of Ghana notes in Section 13(2) that the presence of the respondent is likely to have a serious adverse effect on the victim or a witness, and that the court may take the steps it considers necessary to separate the respondent from the victim or the witness, without sacrificing the integrity of the proceedings. The Supreme Court of India, in the case of *Vishaka v State of Rajasthan & Ors AIR* 1997 S.C.3011 mandated that, when dealing with complaints of sexual harassment, workplaces and other institutions should ensure that neither complainants nor witnesses are subjected to victimization or discrimination and that a complainant should have a right to seek transfer of the perpetrator or their own transfer from the workplace.

Disallowing the public access to the courtroom and/or disallowing publication of courtroom proceedings can protect the complainant/survivor from intimidation, embarrassment and potentially harmful encounters when attending court and when giving testimony. The Namibian *Combating of Rape Act* (2000) places strict restrictions on publishing the identity of the complainant to ensure that her privacy is protected. The *Sexual Offences Bill* under consideration in Mauritius would restrict dissemination of information about the complainant/survivor, declaring it an offence to "publish, diffuse, reproduce, broadcast or disclose, by any means, particulars which lead, or are likely to lead, members of the public to identify the person against whom the offence is alleged to have been committed." Under the Kenyan *Sexual Offences Act* (2006), the gag on publications and process extends to the identity of the family. The Supreme Court of India, in *Vishaka v. State of Rajasthan AIR* 1997 S.C.3011 provided for confidentiality in cases before the sexual harassment complaints committees mandated in workplaces and other institutions. With respect to the offence of rape, the Indian *Evidence Act* was recently amended to prohibit the disclosure of the identity of a complainant in any publication (s.228).

It is important to cross-reference existing witness protection legislation, as is the case in the Kenyan *Sexual Offences Act* (2006), so as to ensure that complainants in violence against women cases are fully aware of its existence and contents.

H. Issues related to the collection and submission of evidence

Recommendation
Legislation should:
- mandate proper collection and submission to court of medical and forensic evidence, where possible;

- mandate the timely testing of collected medical and forensic evidence;
- allow a complainant to be treated and/or examined by a forensic doctor without requiring the consent of any other person or party, such as a male relative;
- ensure that multiple collections of medical and forensic evidence are prevented so as to limit re-victimization of the complainant;
- state that medical and forensic evidence are not required in order to convict a perpetrator; and
- provide the possibility of prosecution in the absence of the complainant/survivor in cases of violence against women, where the complainant/survivor is not able or does not wish to give evidence.

Commentary

The diligent collection of medical and forensic evidence is an important duty of public authorities. Various countries are applying greater diligence in the collection of evidence in cases of violence against women, and complainants are increasingly encouraged to access services where they may safely and confidentially preserve medical and forensic evidence. Under the United States of America *Violence Against Women and Department of Justice Reauthorization Act* (2005), states must ensure that survivors have access to forensic examination free of charge even if they choose not to report the crime to the police or otherwise cooperate with the criminal justice system or law enforcement authorities. In Kenya, guidelines developed under the *Sexual Offences Act* (2006) stipulate the protection of the dignity of the survivor in the gathering of evidence and require that: evidence is gathered in the least intrusive manner possible; there are a limited number of sessions; and the medical form is detailed and easily understood by all parties, including the court.

However, forensic and medical evidence may not be available in court proceedings for a variety of reasons, including complainants' lack of knowledge regarding the importance of such evidence; fear of medical examination; actions taken that may unintentionally compromise evidence, such as washing after being sexually assaulted or time lapse in seeking services; lack of available facilities, or personnel trained in the collection of evidence in cases of violence against women in a manner sensitive to the complainant/survivor; and the nature of the violence. It is therefore important that legislation also allow for the prosecution and conviction of an offender based solely on the testimony of the complainant/survivor, as detailed in part 7.G of the framework in relation to protection orders, and part 8.J(i) on removing the corroboration rule/cautionary warning.

There will be instances in which the complainant/survivor does not wish to provide testimony and/or a written statement, due to fear caused by threats from the perpetrator, shame, or other reasons. Given the importance of the complainant/survivor's testimony to prosecution evidence in cases of violence against women, some countries have chosen to adopt a policy of mandatory complainant/survivor testimony. However, this practice may

deter the complainant/survivor from contacting the police. An alternative to mandatory complainant/survivor testimony is the possibility of prosecution in the absence of the complainant/survivor. Such a prosecution indicates that the crime is taken seriously by the justice system and can also promote the safety of the complainant/survivor. In order to strengthen the agency of the complainant/survivor, it is critical to ensure that she remains informed throughout all stages of the proceedings in absent-complainant/survivor prosecutions.

I. No adverse inference from delay in reporting

Recommendation
Legislation should:
- prohibit courts from drawing any adverse inference from a delay of any length between the alleged commission of violence and the reporting thereof;
- require that the presiding judicial officer in any case of violence against women inform the jury, assessors or himself/herself that a delay in reporting should not be held against the complainant.

Commentary
Complainants/survivors of violence often delay in reporting the violation to public authorities. Such delays may be due to a number of reasons, including the complainant's/survivor's fear of stigmatization, humiliation, not being believed, and retaliation; financial or emotional dependence on the perpetrator; and distrust in, and lack of access to, responsible institutions, resulting from geographically inaccessible courts and lack of specialized criminal justice personnel. Despite these legitimate concerns, delays in the reporting of violence against women are often interpreted as demonstrating that the complainant/survivor is unreliable.

Many countries are now legislating to ensure that adverse inferences are not drawn from any delay between an act of violence against women and the reporting of the violation to authorities. Section 7 of the Namibia *Combating of Rape Act* (2000) provides that: "In criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any inference only from the length of the delay between the commission of the sexual or indecent act and the laying of a complaint". Section 59 of the South Africa *Criminal Law (Sexual Offences and Related Matters) Act* (2007) contains similar wording. Section 16 of the Philippines' *Anti-Violence against Women and their Children Act* (2004) states that the court shall not deny the issuance of a protection order due to lapse of time between the act of violence and the filing of the application.

J. Removing discriminatory elements from legal proceedings regarding sexual violence

i. Removing the cautionary warning/corroboration rule

Recommendation
Legislation should abolish the cautionary warning/corroboration rule in regard to complainants in cases of sexual violence by either:

- stating that "it shall be unlawful to require corroboration of the complainant's evidence";
- creating an assumption of the complainant's credibility in sexual violence cases;
- stating that "the credibility of a complainant in a sexual violence case is the same as the credibility of a complainant in any other criminal proceeding".

Commentary
The cautionary warning is a practice by which a court warns itself or the jury that it is dangerous to convict on the uncorroborated evidence of the complainant/survivor (otherwise known as the "corroboration rule"). This practice is based on the belief that women lie about rape and that their evidence should be independently corroborated. It continues to be implemented in a number of countries, particularly in common law and "Sharia" jurisdictions. However, many countries have removed the warning/rule from their legal systems. The Cook Islands *Evidence Amendment Act* (1986-7), based on New Zealand legislation, provides that, where law or practice previously required that the evidence of a rape or sexual assault survivor be supported by corroboration in order to gain a conviction, it is no longer required. Similarly, section 5 of the Namibian *Combating of Rape Act* (2000) provides that: "No court shall treat the evidence of any complainant in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature with special caution because the accused is charged with any such offence." In sentencing a perpetrator for rape of a minor girl, a court in Honduras cited case law of the Constitutional Court of Spain to support its own decision to give probative value to testimony of the complainant/survivor when it was the only evidence available to the judge.

ii. Evidence of complainant/survivor's sexual history not to be introduced

Recommendation
Legislation:

- should prevent introduction of the complainant's sexual history in both civil and criminal proceedings.

Commentary
In many countries, complainant/survivor's prior sexual history continues to be used to deflect attention away from the accused onto the complainant. When the complainant/survivor's past consensual sexual experience is admitted into evidence, it can be used to affect her credibility to the extent that she is not believed and the

prosecution does not succeed. Evidence related to the complainant/survivor's past sexual history has been used during sentencing of the perpetrator to reduce the severity of the sentence. Complainants/survivors of sexual violence have often been "re-victimized" when questioned by defence attorneys about details of their private sexual conduct.

Laws which prevent the introduction of evidence of a survivor's sexual behaviour that is unrelated to the acts that are the subject of the legal proceeding can help protect women's privacy and avoid introduction of evidence that could prejudice the judge, or jury against the survivor. The United States Federal Rule of Evidence 412, as amended by the *Violence Against Women Act* (1994), prohibits the introduction of unrelated evidence regarding the complainant's sexual history in both civil and criminal proceedings. Section 293(2) of the New South Wales, Australia, *Criminal Procedure Act* (1986) states: "Evidence relating to the sexual reputation of the complainant is inadmissible". The Indian *Evidence (Amendment) Act* (2003) removed the section of the former Evidence Act which allowed the impeachment of the credibility of a complainant/survivor to a rape/attempted rape. It is important to ensure that such legislation is not weakened by loopholes or unfavourable judicial interpretations.

K. No offence of "false accusation"

Recommendation
Legislation should:
- not include a provision criminalizing false accusations/allegations.

Commentary
Legislation on violence against women sometimes contains a provision that falsely accusing someone under the legislation constitutes a criminal offence. Provisions of this kind may dissuade complainants/survivors from filing cases due to fear of not being believed, and there is a high risk that such provisions may be applied incorrectly and used by the defendant/offender for purposes of retaliation. Intentionally misleading the court is commonly dealt with in other areas of the law and should not be included in legislation on violence against women. A number of more recent pieces of legislation on violence against women, such as South Africa's *Criminal Law (Sexual Offences and Related Matters) Amendment Act* (2007), therefore do not include such a provision.

8. Protection orders

A. Protection orders for all forms of violence against women

Recommendation
Legislation should:
- make protection orders available to survivors of all forms of violence against women.

Commentary

Protection orders are among the most effective legal remedies available to complainants/survivors of violence against women. They were first introduced in the United States of America in the mid-1970s, offering an immediate remedy to complainants/survivors of domestic violence by authorizing courts to order an offender out of the home. All States now provide for protection orders. Such orders vary greatly in their specificity regarding the length of the order, its enforceability, who may apply for and issue it, and whether financial support or other relief may be ordered.

Experience has shown that complainants/survivors of forms of violence other than domestic violence also seek protection orders and a number of recent legislative developments have extended the application of such orders accordingly. Chapter 6 of the Mexican *Law on Access of Women to a Life Free of Violence* (2007) makes protection orders available to survivors of any form of violence defined in the Act, including violence in the family, violence in the workplace or educational settings, violence in the community, institutional violence, and femicide. The *Forced Marriage (Civil Protection) Act* 2007 in the United Kingdom allows courts to issue an order for the purposes of protecting (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage.

B. Relationship between protection orders and other legal proceedings

Recommendation

Legislation should:

- make protection orders available to complainants/survivors without any requirement that the complainant/survivor institute other legal proceedings, such as criminal or divorce proceedings, against the defendant/offender;
- state that protection orders are to be issued in addition to and not *in lieu* of any other legal proceedings;
- allow the issuance of a protection order to be introduced as a material fact in subsequent legal proceedings.

Commentary

The issuance of protection orders in some countries is dependent upon the complainant/survivor taking further legal action, such as bringing criminal charges and/or filing for divorce. This requirement may deter survivors from seeking protection orders and could result in complainants/survivors being penalized if they fail to comply with this requirement. Under the *Domestic Violence Act* (2007) in Ghana, individuals may apply for protection orders independently of any other proceedings, and the institution of criminal or civil proceedings does not affect the rights of an applicant to seek a protection order under the Act. In Fiji, applications for protection orders under section 202 of the *Family Law Act* (2003) may be made independently of other legal proceedings. Under

the Philippines *Anti-Violence against Women and their Children Act* (2004), the complainant may apply for a protection order independently of a criminal action or other civil action.

C. Content and issuance of protection orders

Recommendation

Legislation should provide:

- that protection orders may contain the following measures:
  - order the defendant/perpetrator to stay a specified distance away from the complainant/survivor and her children (and other people if appropriate) and the places that they frequent;
  - order the accused to provide financial assistance to the complainant/survivor, including payment of medical bills, counselling fees or shelter fees, monetary compensation, and in addition, *in cases of domestic violence*, mortgage, rent, insurance, alimony and child support;
  - prohibit the defendant/perpetrator from contacting the complainant/survivor or arranging for a third party to do so;
  - restrain the defendant/perpetrator from causing further violence to the complainant/survivor, her dependents, other relatives and relevant persons;
  - prohibit the defendant/perpetrator from purchasing, using or possessing a firearm or any such weapon specified by the court;
  - require that the movements of the defendant/offender be electronically monitored;
  - instruct the defendant/perpetrator *in cases of domestic violence* to vacate the family home, without in any way ruling on the ownership of such property and/or to hand over the use of a means of transportation (such as an automobile) and/or other essential personal effects to the complainant/survivor;
- for the issuance of protection orders in both criminal and civil proceedings; and
- that authorities may not remove a complainant/survivor from the home against her will.

Commentary

Over time, the range of measures included in protection orders has broadened. The Spanish *Act Regulating the Protection Order for Victims of Domestic Violence* (2003) provides for a range of remedies, such as forbidding the offender to approach the complainant/survivor directly or through third persons; ordering the accused to keep a specified distance away from the complainant/survivor, her children, her family, her residence, her place of work or any other place she might visit or frequent, including the obligation to abandon the common residence; temporary child custody; vacation determination; and payment for child support and basic living expenses, including rent and insurance.

In some countries, including Albania, the Netherlands, and the United States, courts may order the perpetrator to pay child support, as well as to make payments towards the survivor's rent, mortgage and insurance as a condition in the granting of a protection order. Article 20 of the Indian *Protection of Women from Domestic Violence Act* (2005) states that: "the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence."

Article 10(1) of Albania's *Law on Measures against Violence in Family Relations* (2006) authorizes the courts to order the perpetrator to leave the shared dwelling, and/or to pay rent for the permanent or temporary residence of the complainant/survivor. Under sections 33 to 41 of the *Family Law Act* (1996) in the United Kingdom, complainants/survivors may apply for an occupation order, in addition to a protection order, which would entitle her to remain in the home and 'bar' the offender from the premises or restrict him to a particular part of the home. Similar orders are provided for in section 20 of the Ghanaian *Domestic Violence Act* (2007), and section 19 of the Indian *Protection of Women from Domestic Violence Act* (2005).

D. Emergency orders

Recommendation

Where there is an allegation of immediate danger of violence, legislation should:

- provide relevant officials with the authority to order a respondent out of the home and to stay away from the survivor; and
- state that the procedure should occur on an *ex parte* basis without a hearing and should prioritize survivor safety over property rights and other considerations.

Commentary

Legislation in an increasing number of countries provides for the issuance of emergency protection orders in situations where there is immediate danger of an act of violence. The procedural requirements for emergency protection orders differ from country to country. In Austria, and some other European countries, including Germany, the Czech Republic, the Netherlands and Slovenia, police may issue ex officio an order that expels a person who endangers the life, health or freedom of another person from a shared dwelling for ten days. In Bulgaria under the *Law on Protection against Domestic Violence* (2005), complainants/survivors may apply for an emergency protection order through either the court or the nearest police department. Under section 14 of the Philippines *Anti-Violence against Women and their Children Act* (2004), the Punong Barangay or Kagawad (elected village officials) may issue *ex parte* protection orders of 15 days' duration. In instances where legislation allows traditional authorities to exercise quasi-judicial powers, it is important that the procedure is transparent and prioritizes the rights of the complainant/survivor over other considerations, such as the reconciliation of families or communities. Laws on domestic violence in many Latin American countries, including

Brazil, Chile, Paraguay, Uruguay and Venezuela, provide for similar orders which are called "urgency" or "protection" measures. In Fiji, a court may grant an injunction under the *Family Law Act* (2003) following an *ex parte* application by the complainant/survivor.

E. Post-hearing orders

Recommendation
Legislation should:
- grant courts the authority to issue long-term, final, or post-hearing orders after notice and an opportunity for a full hearing based on allegations of violence.

Commentary
In order to promote complainant/survivor safety, some jurisdictions have introduced long-term or final protection orders. By reducing the number of times that a complainant/survivor must appear in court, such orders diminish the financial, emotional and psychological burdens carried by complainants/survivors, as well as the number of times they are forced to confront the perpetrator. For example, in the State of New Jersey, United States of America, a final protection order may be issued following a full court hearing. The final protection order stays in effect unless affirmatively dismissed by a court. Under section 14 of the *Domestic Violence Act* (2007) of Ghana, an interim protection order (of no more than three months) will become final if the respondent does not appear before the court to show cause why the interim order should not be made final.

F. Standing in application for protection orders

Recommendation
Legislation should either:
- limit standing in application for protection orders to the complainant/survivor and, in cases where the complainant/survivor is legally incompetent, a legal guardian; or
- allow other actors, such as State actors, family members, and relevant professionals to have standing in such applications, while ensuring that the agency of the complainant/survivor is respected.

Commentary
Different experiences exist regarding who should apply for protection orders**.** Some argue that only the complainant/survivor should be able to apply, while others argue that police, social workers, and other family members should be able to apply on behalf of the complainant/survivor regardless of whether she consents. Under the *Organic Act on Integrated Protection Measures against Gender Violence* (2004) in Spain, family members living in the same house and public prosecutors are able to apply for criminal law protective orders, although the complainant/survivor's wishes must be taken into

account in the full hearing by a court. Under the Philippines *Anti-Violence against Women and their Children Act* (2004) an extensive list of persons are able to apply for a protection order, including the complainant/survivor; parents, guardians, ascendants, descendants and other relatives of the complainant/survivor; social workers; police officers; village officials; and lawyers, counsellors and healthcare providers of the complainant/survivor.

Those who argue that only the complainant/survivor should be able to apply emphasize that authorizing third parties to apply for protection orders, independent of the survivor's wishes, may compromise her interests and safety. One of the original purposes of the protection order remedy was to empower the complainant/survivor. Third parties whose motivations are not in the best interests of the survivor or her children may abuse the ability to apply for a protection order. Further, survivors of violence are often the best judges of the danger presented to them by a violent partner and allowing others to apply for such orders removes control over the proceeding from them.

G. Evidence of complainant/survivor sufficient for grant of protection order

Recommendation
Legislation should state:

- that live testimony or a sworn statement or affidavit of the complainant/survivor is sufficient evidence for the issuance of a protection order; and
- no independent evidence – medical, police or otherwise – should be required for the issuance of a protection order following live testimony or a sworn statement or affidavit of the complainant/survivor.

Commentary
Legislation and/or legal practice sometimes require that evidence, in addition to the complainant/survivor's statement or affidavit, must be submitted in order for a protection order to be granted. Such a requirement may compromise the complainant/survivor's safety by causing significant delays and rescheduling of hearings. Under the *Law on Protection against Domestic Violence* (2005) in Bulgaria, courts may issue an emergency or regular protection order based solely upon the complainant/survivor's application and evidence.

H. Issues specific to protection orders in cases of domestic violence

i. Mutual protection orders and citations for provocative behaviour not to be included in legislation

Recommendation
Legislation should:

- not grant authority to State officials to cite survivors for "provocative behaviour"; and
- not authorize State officials to issue mutual orders for protection.

Commentary

Legislation in some countries allows police to issue a warning to a complainant/survivor of violence if she has allegedly committed "provocative behaviour". Experience has shown that courts are unlikely to grant the complainant/survivor a protection order if she has been cited for "provocative behaviour". As a result, advocates in countries where such provisions exist, including the Ukraine, are currently proposing amendments to such clauses.

In the United States of America, some judges presented with a complainant/survivor's application for a protection order have issued mutual protection orders that restrict the conduct of both parties. These orders imply that both the complainant/survivor and the perpetrator are equally at fault and liable for violations, and can create ongoing legal problems for the complainant/survivor. While legislation discourages the granting of mutual protection orders, some judges continue to grant them.

ii. Addressing child custody in protection order proceedings

Recommendation

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 at least three months has passed since the most recent act of violence, 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.

Commentary

In many countries, violent offenders have used custody of children as a way to continue to abuse and gain access to survivors. In Georgia, the *Law on Elimination of Domestic Violence, Protection of and Support to its Victims* (2006) authorizes courts to consider the safety of the child in custody decisions in protection order proceedings. In Bulgaria, courts may temporarily relocate "the residence of the child with the parent who is the victim or with the parent who has not carried out the violent act at stake". Section 28 of the Philippines *Anti-Violence against Women and their Children Act* (2004) provides that "the woman victim of violence shall be entitled to the custody and support of her child/children and "in no case shall custody of minor children be given to the perpetrator of a woman who is suffering from battered woman syndrome".

Experience in some countries and cases suggests that custody decisions in protection order proceedings should be temporary and permanent custody issues should be dealt with only in divorce proceedings or family court. An alternative view is that courts deciding custody matters in protection order cases have a better understanding of domestic violence than courts deciding custody in the context of divorce or other family law matters, and should therefore be granted power to make permanent custody orders. Further recommendations regarding how to address child custody in family law proceedings are contained in part 10 of the framework.

I. Criminal offence of violation of a protection order

Recommendation
Legislation should:
- criminalize violations of protection orders.

Commentary
In countries where legislation does not criminalize the violation of a civil protection order, prosecutors and police have expressed frustration about their inability to arrest the perpetrator. In Spain, any violation of a protection order is criminalized and, when a protection order is violated, the survivor is entitled to a full hearing on whether aspects of the protection order should be amended, including the distance the perpetrator must keep away from the survivor, the duration of the protection order, or the use of electronic devices to track the perpetrator. In case of severe risk or great harm, the offender may be put in precautionary pre-trial detention. Violation of a protection order is a criminal offence under section 17 of the South African *Domestic Violence Act* (1998). When a court issues a protection order under that Act, it also issues a warrant for the arrest of the respondent which is suspended subject to compliance with the order. The *Domestic Violence Crime and Victims Act* (2004) of the United Kingdom specifically criminalizes breach of a protection order, and in Turkey, a perpetrator who violates a protection order may be sentenced to prison for three to six months. Under the Philippines *Anti-Violence against Women and their Children Act* (2004), violation of a protection order is a criminal offence punishable by a fine and/or six months imprisonment. Some countries, such as Bulgaria, are in the process of considering amendments to existing legislation to criminalize violations.

9. Sentencing

A. Consistency of sentencing with the gravity of the crime committed

Recommendation
Legislation should provide that:

- sentences should be commensurate with the gravity of crimes of violence against women; and
- sentencing guidelines should be developed to ensure consistency in sentencing outcomes.

Commentary

Sentences imposed in cases of violence against women within countries have varied, been inconsistent and often informed by discriminatory attitudes held by justice officials regarding complainants/survivors of violence against women. Efforts have been undertaken to reduce sentencing discrepancies and to ensure that sentences in cases of violence against women are commensurate with the gravity of the crime committed. Experience shows that the introduction of sentencing guidelines may contribute to the normalization of sentences imposed in cases of violence against women. In the United Kingdom, the Sentencing Guidelines Council finalized Sentencing Guidelines on the *Sexual Offences Act* (2003) in 2007. Mandatory minimum sentences have been implemented in a number of countries in an attempt to reduce sentencing discrepancies. However, experience varies regarding their efficacy and deterrent value.

B. Removal of exceptions and reductions in sentencing

Recommendation

Legislation should remove provisions which:

- provide reduced penalties and/or exculpate perpetrators in cases of so-called honour crimes;
- exculpate a perpetrator of violence if he subsequently marries the survivor; and
- provide for the imposition of lesser penalties in cases involving particular 'types' of women, such as sex workers or non-virgins.

Commentary

Legislation on violence against women in many countries continues to contain provisions which absolve and/or provide lesser sentences for perpetrators of violence against women in certain circumstances. For example, some penal codes contain provisions which state that if a perpetrator marries the survivor of sexual violence, the perpetrator will not be liable for the crime. Many penal codes contain provisions which provide for the imposition of lesser penalties in cases of so-called honour crimes.

A number of countries have taken action to remove such provisions from their penal codes. For example, in 2003, article 462 of the Penal Code of Turkey, which previously granted sentence reductions to a person killing or wounding a family member who had committed adultery, was deleted. In 1994, Brazil amended its Penal Code by Law 8.930 so as to remove sections VII and VIII of Article 107, and in 2006 Uruguay amended

article 116 of its Penal Code, each of which had exculpated perpetrators who married the survivor of sexual violence.

C. Enhanced sanctions for repeated/aggravated offence of domestic violence

Recommendation
Legislation should provide for:
- increasingly severe sanctions for repeated incidents of domestic violence, regardless of the level of injury; and
- increased sanctions for multiple violations of protection orders.

Commentary
Repeated incidents of domestic violence are common and, when the same penalty is applied for each assault, the deterrent effect is questionable. In the United States of America and some countries in Europe, more severe penalties for repeated incidents have proven to be effective. The Swedish 'Kvinnofrid' reform package of 1998 introduced a new offence, "gross violation of a woman's integrity", into the Criminal Code to address situations where a man repeatedly commits certain criminal acts against a woman with whom he is or has been married or cohabiting. The offence is punishable by imprisonment of no less than six months and at most six years. Section 215a of the Czech Republic Criminal Code provides for enhanced penalties in cases of repeated domestic violence. New amendments to laws in the United States of America provide that judges can grant protection orders that last for 50 years when a survivor has had two previous protection orders against the abuser or when the abuser has violated a protection order on two occasions.

D. Considerations in imposition of fines in cases of domestic violence

Recommendation
Legislation should state that:
- fines should not be imposed in cases of domestic violence if doing so would cause financial hardship to the survivor and/or her children; and
- when fines are imposed, they should be combined with treatment and supervision of the perpetrator through probation.

Commentary
In many cases of violence against women, the perpetrator may be sentenced, in criminal proceedings, or ordered, in civil proceedings, to pay a fine. A fine is an amount of money paid by the perpetrator to the State for a breach of either criminal or civil law. The imposition of fines on perpetrators of domestic violence has been noted to potentially burden the survivor and therefore constitute an inappropriate form of punishment for the perpetrator. For this reason, some countries, such as Spain, have excluded the imposition

of fines for this kind of offence. In addition, experience has suggested that fines are not a sufficient form of punishment to change the behaviour of the perpetrator.

E. Restitution and compensation for survivors

Recommendation
Legislation should:
- provide that sentences in criminal cases may order the payment of compensation and restitution from the perpetrator to the survivor;
- state that while compensation may be an element in penalizing perpetrators of violence against women, it should not substitute for other penalties, such as imprisonment; and
- make provision for the creation of a Government-sponsored compensation programme, which entitles survivors of violence against women to apply and receive a fair amount of compensation.

Commentary
An aspect of sentencing which has not been fully utilized is the possibility of requiring the perpetrator to pay compensation to the survivor. However, an increasing number of countries are enacting legislation that allows for the award of compensation in criminal cases, such as article 11 of the Guatemalan *Law against Femicide and other Forms of Violence against Women* (2008) which provides reparation proportional to the damage caused by the violence; and the United Kingdom's *Criminal Injuries Compensation Act* (1995). In Spain, a special fund for survivors of violent crimes and crimes against sexual freedom was established by the *Act Concerning Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom* (1995).

F. Intervention programmes for perpetrators and alternative sentencing

Recommendation
Legislation should:
- provide that intervention programmes for perpetrators may be prescribed in sentencing and mandate that the operators of such programmes work in close cooperation with complainant/survivor service providers;
- clarify that the use of alternative sentencing, including sentences in which the perpetrator is mandated to attend a intervention programme for perpetrators and no other penalty is imposed, are to be approached with serious caution and only handed down in instances where there will be continuous monitoring of the sentence by justice officials and women's non-governmental organizations to ensure the complainant/survivor's safety and the effectiveness of the sentence; and

- mandate careful review and monitoring of intervention programmes for perpetrators and alternative sentencing involving women's non-governmental organizations and complainant/survivors.

Commentary

Alternative sentencing refers to all sentences and punishment other than prison incarceration, including community service and/or the requirement that the perpetrator attend an intervention programme for perpetrators. An increasing number of countries provide for the option of a sentence mandating that a perpetrator attend an intervention programme for perpetrators either in addition to, or in substitution for, other penalties. While there have been some positive experiences with such programmes, service providers for survivors have emphasized that, where limited funding is available, services for survivors should be prioritized over programmes for perpetrators, and that such sentences should only be imposed following an assessment to ensure that there will be no risk to the safety of the survivor. Articles 11 to 20 of the Costa Rican *Criminalization of Violence against Women Law* (2007) provide detailed instructions on when alternative sentences may be imposed and the alternatives available. In Spain, the *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides the possibility of suspension or substitution of other penalties in cases of violence against women, when the possible jail penalty would be less than two years. In cases where the sentence is suspended, the perpetrator is obliged to participate in an intervention programme. Experience has highlighted the importance of instituting well-developed programmes in order to ensure that the survivor remains safe and the perpetrator benefits from the programme. The United Kingdom has had positive experiences with the Integrated Domestic Abuse Programme as an option in sentencing. The programme runs for 26 weeks and is focused on getting perpetrators to accept responsibility for their behaviour and commit to altering their behaviour and attitudes. Accredited programmes must be associated with an organization supporting survivors, so that there is feedback from the survivor regarding whether the violence is continuing.

G. Relationship between customary and/or religious law and the formal justice system

Recommendation

Legislation should state that:

- where there are conflicts between customary and/or religious law and the formal justice system, the matter should be resolved with respect for the human rights of the survivor and in accordance with gender equality standards; and
- the processing of a case under customary and/or religious law does not preclude it from being brought before the formal justice system.

Commentary

In many countries, cases of violence against women continue to be dealt with through customary and/or religious law procedures and measures, such as the provision of 'compensation' to the family or community of the survivor, and customary reconciliation practices of ceremonies of forgiveness. The application of such laws has proven to be problematic as they do not focus on healing of, and providing redress to, the survivor. In addition, in many instances, the use of customary and/or religious law has been seen to preclude the survivor from seeking redress within the formal justice system. On the other hand, there is some evidence of the benefits of certain informal justice mechanisms, such as "women's courts", which are often more accessible to women survivors of violence than the official court system, both in terms of their geographical location, and in relation to the language and manner in which court proceedings are conducted.

It is therefore important to clarify the relationship between customary and/or religious law and the formal justice system, and to codify the survivor's right to be treated in accordance with human rights and gender equality standards under both processes. An interesting example of integration of customary law into the formal justice system is the *Criminal Law (Compensation) Act* 1991 of Papua New Guinea, which allows survivors of crimes, including sexual violence and domestic violence, to claim compensation from the perpetrator. Claiming compensation for wrongdoing is a common feature of customary law in Papua New Guinea, and the enactment of legislation on compensation was intended to reduce the occurrence of "payback" crimes.

10. *Family law cases involving violence against women*

Recommendation

Legislation should guarantee the following and amend all relevant provisions in family law to reflect this:

- divorce from a violent husband and adequate alimony to women and children;
- the survivor's right to stay in the family dwelling after divorce;
- social insurance and pension rights of survivors who divorce the perpetrator;
- expedited distribution of property, and other relevant procedures;
- careful screening of all custody and visitation cases so as to determine whether there is a history of violence;
- a statutory presumption against awarding child custody to a perpetrator;
- availability, in appropriate cases, of professionally run supervised visitation centres;
- a survivor of violence who has acted in self-defence, or fled in order to avoid further violence, should not be classified as a perpetrator, or have a negative inference drawn against her, in custody and visitation decisions; and
- child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers.

Commentary

Protection from domestic violence and the right to a life free from violence should be a principle not only in legislation on violence against women but also in all relevant areas of family and divorce law. An award of child custody to a perpetrator of violence against women poses a danger to both the adult survivor and the child. The need for ongoing contact after separation to make custody and visitation arrangements is often used by the perpetrator to continue abuse of the survivor.

In the United States of America, Congress unanimously passed a resolution in 1990 urging every state to adopt a statutory presumption against awarding custody to a parent who has committed domestic violence. Some countries require that a third party oversee the exchange of children at the beginning and end of visitation by the perpetrator. However, a number of issues with this approach are apparent. Even where supervised visitation centres are available, as is the case in the United States of America, and in European countries, such as Spain and the United Kingdom, they are expensive to establish and operate and the quality of such centres is inconsistent. Furthermore, supervised visitation does not eliminate the risk that the perpetrator will use visitation as an opportunity to harm the survivor and/or her child.

In child abuse and neglect proceedings, adult survivors of violence are sometimes blamed for exposing their children to domestic violence. In the United States of America, representatives of domestic violence organizations and child protective services agencies collaborated on writing a set of recommendations directed at courts, community organizations, and others in order to protect the safety and well-being of both women and children. An evaluation showed some improvements in awareness and practices concerning domestic violence at child welfare agencies in communities that had received federal funding to implement the recommendations; however, institutional change was difficult to achieve and sustain.

11. Civil lawsuits

A. Civil lawsuits against perpetrators

Recommendation

Legislation should:

- permit complainants/survivors of violence against women to bring civil lawsuits against perpetrators; and
- abolish requirements forbidding women to bring lawsuits against a husband or other family member, or requiring the consent of a husband or other family member in order for a woman to bring a lawsuit.

Commentary

Civil lawsuits are a valuable supplement or alternative to criminal prosecution, civil protection orders, and other available legal remedies. Depending on the facts of the case and the law of the jurisdiction, the forms of relief available to successful plaintiffs in civil lawsuits may include compensatory damages, punitive damages, declaratory and injunctive relief, and a court order requiring the defendant to pay the prevailing plaintiff's attorney fees. In many legal systems, civil actions have advantages over criminal actions. Civil cases are governed by a lower burden of proof than criminal cases, complainants/survivors have control over the action, and some complainants/survivors consider the types of relief granted in a successful civil lawsuit more helpful than incarceration of the perpetrator. In the United States of America, recent doctrinal changes have made it easier for domestic violence complainants/survivors to bring civil suits against perpetrators. Some states have extended the statute of limitations for domestic violence claims and the ancient common law doctrine of inter-spousal tort immunity, which prohibited one spouse from suing the other, has been abandoned in most states.

B. Civil lawsuits against third parties

Recommendation

Legislation should allow:

- complainants/survivors of violence against women to bring lawsuits against governmental or non-governmental individuals and entities that have not exercised due diligence to prevent, investigate or punish the violence; and
- lawsuits on the basis of anti-discrimination and/or civil rights laws.

Commentary

Law suits against third parties provide an additional opportunity to hold government agencies and other institutions accountable for violence against women, and may also present a source of monetary compensation for the survivor. In the case of *Chairman Railway Board v. Chandrima Das* (MANU/SC/0046/2000), the Indian Supreme Court affirmed the unprecedented award of 10,000,000 rupees to a Bangladeshi survivor of rape by railway officials in West Bengal as compensation for the violation of the woman's fundamental right to life and equality under the Indian Constitution, irrespective of her foreign citizenship. In the case of *Thurman v. City of Torrington*, (595 F. Supp. 1521 D. Conn. 1984) a plaintiff sued the city of Torrington, Connecticut, in the United States of America, alleging that police officers repeatedly ignored her complaints about violence by her estranged husband and even stood by and watched as he brutally attacked her and was awarded US $2.3 million in damages by the jury. Following the case, many police departments strengthened their policies on responding to domestic violence.

A subset of civil lawsuits against perpetrators or third parties consists of lawsuits brought under anti-discrimination or civil rights laws. Depending on the law of the jurisdiction, anti-discrimination or civil rights laws may authorize criminal actions, civil actions, or

both. Such lawsuits place acts of violence against women in the larger context of systemic gender inequality and make it clear that women have a right to equality as well as a right to physical safety. Violence against women is recognized in the law as a form of discrimination in several countries, including the South African *Promotion of Equality and Prevention of Unfair Discrimination Ac.,* The New Zealand *Human Rights Act* (1993) defines sexual harassment as a form of discrimination and a violation of women's human rights. In the United States of America, some states and localities permit complainants/survivors of gender-based violence to file a lawsuit for the violation of their civil rights.

12. Violence against women and asylum law

Recommendation
Legislation should:
- provide that violence against women may constitute persecution and that complainants/survivors of such violence should constitute "a particular social group" for the purposes of asylum law.

Commentary
Survivors of violence should be eligible for asylum under appropriate circumstances. Positive developments in jurisprudence have increasingly acknowledged that violence against women is a basis for the granting of asylum. For example, in 1999 the English House of Lords made a landmark decision in relation to a claim of asylum based on domestic violence. The case of *R v Immigration Appeal Tribunal; Ex Parte Shah* [1999] 2 AC 629 dealt with the claims of two married Pakistani women who were forced by their husbands to leave their homes and were at risk of being falsely accused of adultery in Pakistan. The House of Lords granted the two women asylum on the basis that they were a member of a particular social group which, at its broadest, could be classified as Pakistani women who are discriminated against and as a group unprotected by the State. In the *Matter of Fauziya Kassinja*, 21 I. & N. Dec. 357, Interim Decision 3278, 1996 WL 379826 (Board of Immigration Appeals 1996), the United States of America Department of Justice Board of Immigration Appeals granted asylum to a woman who had fled from Togo to avoid being subjected to female genital mutilation. However, this reasoning has not been consistently applied by the courts in the United States of America to all cases of gender-based violence.

Annex I. List of participants

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Annex II. Programme of work

MONDAY, 26 MAY 2008	
Time	**Activity**
9:00-10:00	**Registration of participants**
10:00-10:30	**Opening of the meeting and organization of work**
	• Introductory remarks: John Sandage, Chief, Treaty and Legal Assistance Branch, Division for Treaty Affairs, United Nations Office on Drugs and Crime (UNODC), and Christine Brautigam, Chief, Women's Rights Section, Division for the Advancement of Women (UNDAW) • Presentation of methods of work, programme of work, and introduction of participants, Christine Brautigam, UNDAW • Election of Chairperson and Rapporteur
10:30-10:50	**UNDAW background paper and UNODC model legislation on trafficking**
10:30-10:40 10:40-10:50	• Presentation of the background paper, Janette Amer, UNDAW • Presentation on the work of UNODC to develop model legislation on trafficking, Loide Lungameni, Legal Officer, Organized Crime and Criminal Justice Section, UNODC
10:50-13:00	**Good practices in legislation on violence against women: regional perspectives**
10:50-11:00 11:00-11:10 11:10-11:20 **11:20-11:35** 11:35-11:45 11:45-11:55 11:55-13:00	• Renée Römkens, Western Europe • Karen Stefiszyn, Southern Africa • Flor de María Meza Tananta, Latin America • **Tea/Coffee break** • Cheryl Thomas, Eastern Europe • Imrana Jalal, the Pacific • *Plenary Discussion: identifying strengths, weaknesses and commonalities, highlighting effective approaches, and noting good practices in legislation on violence against women*
13:00-14:30	**Lunch break**
14:30-16:15	**Good practices in legislation on violence against women: country experiences**
14:30-14:40 14:40-14:50 14:50-15:00 15:00-15:10 15:10-15:20 15:25-16:00	• Carmen de la Fuente Méndez (Spain) • Rowena Guanzon (Philippines) • Sally Goldfarb (United States of America) • Claudia Herrmannsdorfer (Honduras) • Oby Nwankwo (Nigeria) • *Plenary Discussion: identifying strengths, weaknesses and commonalities, highlighting effective approaches, and noting good practices in legislation*

	on violence against women
16:00-16:15	• **Tea/Coffee break**
16:15-18:00	**Good practices in legislation on violence against women: country experiences (cont.)**
16:15-16:25 16:25-16:35 16:35-16:45 16:45-16:55 16:55-17:05 17:05-18:00	• Funmi Johnson (United Kingdom) • Rosa Logar (Austria) • Naina Kapur (India) • Pinar Ilkkaracan (Turkey) • Njoki Ndungu (Kenya) • *Plenary Discussion: identifying strengths and weaknesses, highlighting effective approaches, and noting good practices in legislation on violence against women*
TUESDAY, 27 MAY 2008	
10:00-11:15	**Good practices in legislation on violence against women: country experiences and regional perspectives (plenary discussion and preparation for Working Groups)**
10:00-11:00 **11:00-11:15**	• *Discussion: recapping day one; Preparation for Working Groups* • **Tea/Coffee break**
11:15-13:00	**Working Groups**
11:15-13:00	• Working Groups meet and prepare proposals
13:00-14:30	**Lunch break**
14:30-18:00	**Working Groups; and preliminary presentation of Working Group proposals**
14:30-16:45 **16:45-17:00** 17:00-18:00	• Working Group discussions (cont) • **Tea/Coffee break** • Plenary: Presentations of preliminary proposals by Working Groups
WEDNESDAY, 28 MAY 2008	
10:00-15:30	**Presentation, discussion and completion of Working Group proposals**
10:00-11:30 **11:30-11:45** 11:45-13:00	• Presentation, discussion and completion of Working Group proposals • **Tea/Coffee break** • Presentation, discussion and completion of Working Group proposals (cont)
13:00-14:00	**Lunch break**
14:00-15:30	**Presentation, discussion and completion of Working Group proposals (cont)**
14:00-15:30 **15:30-16:00**	• Presentation, discussion and completion of Working Group proposals (cont) • **Tea/Coffee break**
16:00-17:00	**Finalization and adoption of the report and closing of the meeting**

Annex III. List of documents

A. PAPERS BY EXPERTS

EGM/GPLVAW/2008/EP.01	Legal Reform on Domestic Violence in Central and Eastern Europe and the Former Soviet Union Cheryl A. Thomas
EGM/GPLVAW/2008/EP.02	The Struggle for Justice: The State's Response to Violence against Women Funmi Johnson
EGM/GPLVAW/2008/EP.03	Sexual Harassment and Law Reform in India Naina Kapur
EGM/GPLVAW/2008/EP.04	A Brief Overview of Recent Developments in Sexual Offences Legislation in Southern Africa Karen Stefiszyn
EGM/GPLVAW/2008/EP.05	Good practices regarding legal reforms in the area of violence against women in Latin America and the Caribbean Flor de María Meza Tananta
EGM/GPLVAW/2008/EP.06	The Legal Response to Violence against Women in the United States of America: Recent Reforms and Continuing Challenges Sally F. Goldfarb
EGM/GPLVAW/2008/EP.07	Good Practices in Legislation on Violence against Women: A Pacific Islands Regional Perspective P. Imrana Jalal
EGM/GPLVAW/2008/EP.08	Effectiveness of Legislation Enacted to Address Violence against Women in Nigeria Oby Nwankwo
EGM/GPLVAW/2008/EP.09	Legal Approaches to Trafficking as a Form of Violence against Women: Implications for a More Comprehensive Strategy in Legislation on the Elimination of Violence against Women Mohamed Mattar
EGM/GPLVAW/2008/EP.10	Good Practices and Challenges in Legislation on Violence against Women Rosa Logar

EGM/GPLVAW/2008/EP.11	Spanish Legislation on Violence against Women: Challenges and Facts Carmen de la Fuente Mendez
EGM/GPLVAW/2008/EP.12	Laws on Violence against Women in the Philippines Rowena V. Guanzon
EGM/GPLVAW/2008/EP.13	Good Practices in Legislation on Violence against Women in Turkey and Problems of Implementation Pinar Ilkkaracan and Liz Ercevik Amado
EGM/GPLVAW/2008/EP.14	The Amendments Process of the Law on Domestic Violence in Honduras Claudia Herrmannsdorfer
EGM/GPLVAW/2008/EP.15	Lobbying the Sexual Offences Act 2006 Njoki Ndungu
EGM/GPLVAW/2008/EP.16	Legal Developments in the Field of Violence Against Women in Western Europe Renee Romkens

B. PAPERS BY OBSERVERS

EGM/GPLVAW/2008/SP.01	Excerpts from Concluding Observations of United Nations Human Rights Treaty Bodies and Reports of the Human Rights Council Working Group on Universal Periodic Review Supporting Paper Dubravka Simonovic
EGM/GPLVAW/2008/SP.02	Legislating for Women's Rights in the Context of the HIV Pandemic: Draft Legislation Project Description Canadian HIV/AIDS Legal Network

C. BACKGROUND PAPERS

EGM/GPLVAW/2008/BP.01	Background Paper for the Expert Group Meeting on Good Practices in Legislation on Violence Against Women Division for the Advancement of Women

EGM/GPLVAW/2008/BP.02	UNODC Draft Model Legislation on Trafficking in Persons United Nations Office on Drugs and Crime

E. INFORMATION PAPERS

EGM/GPLVAW/2008/INF.1	Aide Mémoire
EGM/GPLVAW/2008/INF.2	Proposed Programme of Work
EGM/GPLVAW/2008/INF.3	Information Note for Participants
EGM/GPLVAW/2008/INF.4	Provisional List of Participants
EGM/GPLVAW/2008/INF.5	List of Documents