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Resilient nations.*

Guidance on UNDP Support for

Domestic Violence Law Reform

Advancing Women's Legal Rights, Empowerment and Access to Justice #2

October 2014

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Part 1 Introduction

1.1 Scope of this UNDP Guidance on Support for Domestic Violence Law Reform

The Committee on the Convention to Eliminate All Forms of Discrimination against Women (the CEDAW Committee) defines gender based violence as "...violence that is directed against a woman because she is a woman or that affects women disproportionately".¹ While it is important to address all forms of gender based violence which includes harms such as sexual harassment, sexual assault, early, child and forced marriage, slavery, trafficking and forced prostitution, this policy guidance focuses on domestic violence.

Domestic violence can be differentiated from the broader category of gender based violence by the existence of a relationship characterized by intimacy, familial ties or a shared household.

It is this bond that makes domestic violence particularly serious because it increases the impact of the violence and complicates the response required, since victims need protection in the (often hidden) privacy of their homes and from someone with whom they share or shared an intimate, dependent or familial relationship.² The enactment of good practice legislation to address violence against women, including domestic violence, has been repeatedly recommended and emphasized in many inter-governmental outcome documents including the Declaration on the Elimination of all Forms of Violence against Women, the Beijing Platform for Action, multiple resolutions of the General Assembly, the Human Rights Council and the former Commission on Human Rights on Violence against Women as well as by the CEDAW Committee in General Recommendation 19 (1992). Good practice legislation is a critical component of both the prevention of and response to violence against women and also fulfils the due diligence obligation owed by States.³ Therefore, this UNDP policy guidance focuses on the targeted legislative provisions, both criminal and civil, which are necessary to encompass the complex power dynamics and emotional, financial and legal ties that exist between intimates, family members and others in a domestic relationship. It is important also that family law provisions support domestic violence legislation and that the two bodies of law complement each other however this policy guidance does not focus on family law. The recommended legislative provisions can be enacted as stand-alone legislation, as part of a broader gender based violence law or by inserting provisions into an existing civil and criminal legal framework. Good practice legislation is an indispensable step in a comprehensive approach to the prevention of domestic violence. While the legislation may not translate immediately to the prevention and reduction of domestic violence, without the enactment of a good practice law change is unlikely to be achieved and sustained. The implementation of good practice domestic violence legislation is also important and requires considerable focus and support but is beyond the scope of this particular policy guidance.

1.2 Purpose of Policy Guidance

The purpose of this policy guidance is to assist United Nations Development Program (UNDP) staff in country and regional offices to build commitment and capacity to support national and other partners to undertake domestic violence law reform. It aims to achieve this through developing the capacity of UNDP staff to; understand what domestic violence is, the devastating impact of domestic violence on victims, families, communities and on sustainable human development, the role of legislation in both responding to and preventing domestic violence, and the key components required for good practice domestic violence legislation. Although UNDP staff members are the primary audience, this policy guidance may also be useful to UNDP partners. Support for law reform is a vital part of UNDP's mandate to strengthen democratic governance and is explicitly included in the UNDP Strategic Plan (2014-17). Building capacities to support domestic violence law reform is consistent with UNDP's strong commitment to the Millennium Declaration and the fulfillment of the Millennium Development Goals. Law reform can contribute to key areas of UNDP work in advancing sustainable human development, strengthening democratic governance, and

¹ General Recommendation 19, Violence Against Women, 1992, 11th Session (UN Doc A/47/38) at para [24(r)].

² M Dempsey, "What Counts as Domestic Violence" (2006) 12 *William and Mary Journal of Women and the Law* 301 at 313, 314.

³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding Observations Congo, 13 February–2 March 2012 (CEDAW/C/COG/CO/6) at [24]. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/413/99/PDF/G1241399.pdf?OpenElement> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/467/39/PDF/G1146739.pdf?OpenElement>

building resilience and it enhances the global agendas of United Nations (UN) and UNDP of promoting gender equality and women's empowerment.

UNDP is in a unique position to provide capacity building, policy and advisory support to countries intending to develop new domestic violence legislation or to reform existing legislation because of its:

- strong global presence on the ground in more than 170 countries and territories worldwide;
- powerful convening power to bring diverse partners together;
- ability to foster dialogue and mediate state-citizen relations;
- focus on capacity development;
- relationships working with governments across sectors;
- commitment and experience advancing gender equality and women's empowerment as central to sustainable human development;
- thought leadership and policy advisory expertise;
- experience across the contexts of stability, crisis/post crisis and transition;
- wealth of comparative global experience to bring to the legislative process;
- leading role on democratic governance within the UN system; and
- role as convener of the Resident Coordinator system.

The law reform process includes; a policy development assessment and consultation phase, a law drafting phase, an enactment phase, an ongoing implementation phase and ongoing monitoring and evaluation of the law ultimately enacted. Advocacy and awareness-raising is important throughout all phases. While supportive interventions by UNDP are appropriate at any (or all) of these phases this policy guidance focuses on providing support for the policy development assessment and consultation phase, the law drafting phase, and the enactment phase. Guidance on other phases could follow if this would be useful.

1.3 Content of this Policy Guidance

Part I provides the introduction to this guidance and overviews the scope, purpose and content of the guidance.

Part 2 of this guidance describes the incidence and impact of domestic violence globally, and identifies the relationship between domestic violence and negative development outcomes in areas such as health, housing, education and employment. It explains why, in all legal systems, domestic violence legislation is an important part of national strategies to advance gender equality and to respond to and prevent domestic violence. It explains why UNDP has an important role to play in domestic violence law reform, identifies linkages to its core mandates in the current and forthcoming strategic plans and also to the emerging post development framework.

Part 3 of this guidance provides UNDP staff with the comprehensive overview of domestic violence legislation required to provide capacity building, policy, advisory and advocacy support to countries undertaking domestic violence law reform. It details the key elements recommended for inclusion in good practice domestic violence legislation. It also includes a selection of examples of good practice provisions chosen from draft and enacted domestic violence laws worldwide. These good practice examples were identified as being in accord with the global standards provided by the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*⁴ and other international conventions, relevant reports, and academic literature. While the examples chosen represent a range of good practice options the task of selecting the content of domestic violence legislation must be determined by each country within their particular social, economic, cultural and political contexts. The examples were chosen as representative of good practices in legislative drafting but they may not yet have been successfully implemented in practice.

In order to provide additional resources for UNDP staff, the **Appendix** includes a comprehensive list of all domestic violence legislation worldwide, both enacted and draft, arranged geographically with URL links to the legislation where available. For the purposes of the Appendix, domestic violence legislation is defined as legislation that specially and expressly targets domestic violence. It does not include generic legislation (such as general criminal/penal assault provisions) which could be used in instances of domestic violence although not explicitly targeted toward it. The list includes therefore targeted domestic violence legislation (which is the most frequently adopted legislative approach

⁴ 1979 G.A. Res 34/180 (UN Doc A/34/46).

to domestic violence), gender based violence laws that contain domestic violence provisions, amendments to existing criminal and civil legislation through which targeted domestic violence provisions have been incorporated into legislation, and supplementary laws such as legislation that provides for safe shelters, housing, counseling for victims, social security programs and rehabilitation programs for offenders. It does not include regulations, protocols and guidelines which are enacted or issued to facilitate the implementation of domestic violence legislation. While every effort was made to compile a comprehensive resource the Appendix may not represent a complete list of all domestic violence legislation worldwide. A **bibliography** is also included to provide another source of useful resources for UNDP staff.

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Part 2 UNDP Support for Domestic Violence Law Reform

2.1 Domestic Violence is a Human Rights Violation

Within the UN system UNDP is the lead agency promoting democratic governance. Its focus on capacity building and strengthening governance institutions and the rule of law includes promoting and protecting human rights with a particular focus on women and marginalized groups. Violence against women, children, the elderly and persons with intellectual and physical disabilities within domestic relationships is a fundamental violation of human rights. The Declaration on the Elimination of Violence Against Women (1993) makes clear that in relation to violence against women the principle of due diligence (what a duty-bearer must do to fulfil their international obligations) applies. States are required to exercise due diligence “to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether these acts are perpetrated by the state or by private persons”. The due diligence framework in relation to violence against women has been summarized as requiring prevention, protection, punishment, reparations and compensation.⁵ The Commission on the Status of Women in its Agreed Conclusions on the Elimination of All Forms of Violence Against Women affirmed gender-based violence as a form of discrimination “that seriously violates and impairs or nullifies the enjoyment by women and girls of all human rights and fundamental freedoms” and stressed the due diligence obligations of states.⁶

The CEDAW Committee has stated:

“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. ... The effect of such violence on the physical and mental integrity of women is to deprive them [of] the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.”⁷

Further, the Declaration on the Elimination of Violence in the ASEAN Region (2004) recognizes “violence against women both violates and impairs their human rights and fundamental freedoms, limits their access to and control of resources and activities, and impedes the full development of their potential”, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) affirms that violence against women constitutes “a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms”, and the African Protocol on the Rights of Women (2005) notes the commitment of the African Platform for Action, the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 “to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender based violence against women”.

The Council of Europe recently enacted the Convention on Preventing Violence against Women and Domestic Violence (2011) which states that violence against women is a “human rights violation and a form of discrimination against women”. In 2000, Security Council Resolution 1325 on Women, Peace and Security reaffirmed the Beijing Report’s commitments and specified the human rights law to be extended to women during armed conflict and in the immediate aftermath of armed conflict. Resolution 1325 recognized “the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,” and called on “all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.”

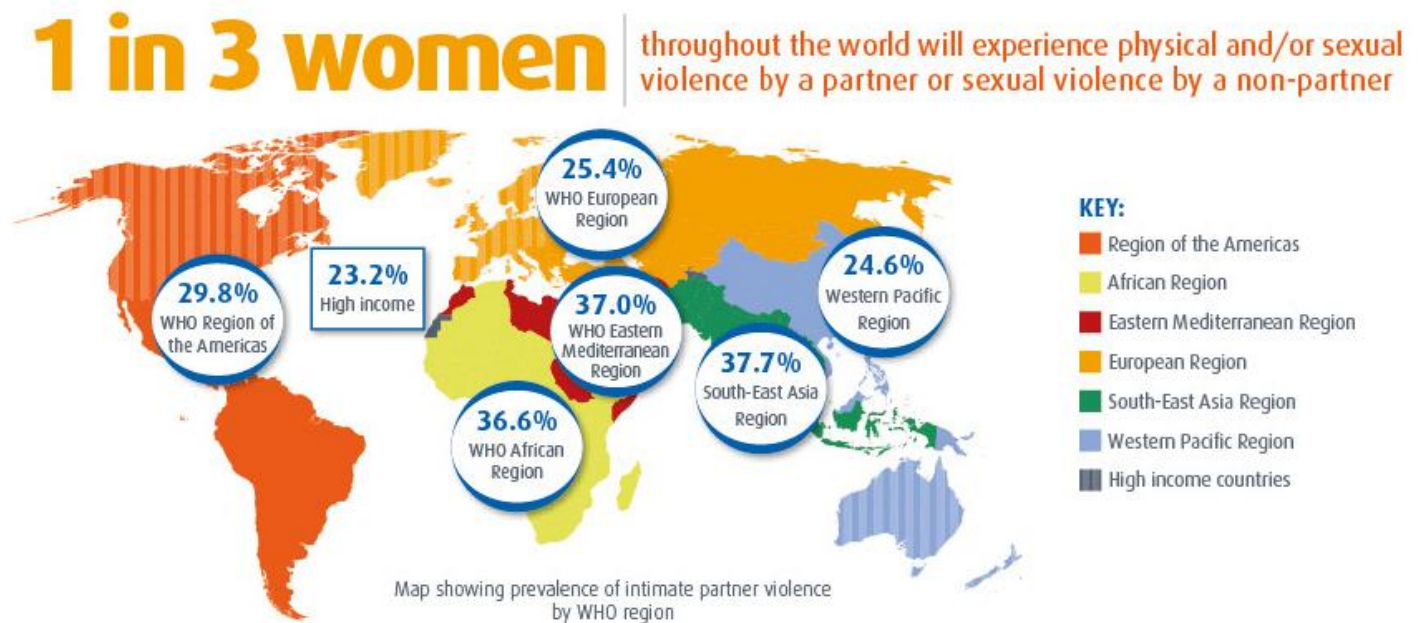
⁵ Special Rapporteur on Violence Against Women (Yakin Erturk) *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women* 35 (2006) UN Doc E/CN.4/2006/61.

⁶ Commission on the Status of Women, *Agreed Conclusions on the Elimination and Prevention of all Forms of Violence Against Women and Girls* 2013 E/CN.6/2013/11.

⁷ Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 19* (11th session, 1992) UN Doc A/47/38.

2.2 High Global Prevalence of Domestic Violence

Domestic violence is globally recognized as an endemic, pervasive, and widespread phenomenon in both developing and developed countries



All statistics can be found in the report entitled Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence, by the World Health Organization, the London School of Hygiene & Tropical Medicine, and the South African Medical Research Council, found here: <http://www.who.int/reproductivehealth/publications/violence/en/index.html>

which occurs in times of stability, transition and during and following crisis. The high prevalence of domestic violence is an obstacle to UNDP's core objectives of supporting human development, gender equality, democratic governance, resilience and peace.

Determining the true extent of domestic violence is difficult because throughout the world, domestic violence is not reported or under reported to authorities.⁶ Worldwide estimates suggest however that 30% of ever partnered women have experienced physical or sexual abuse from her partner and at least one in three women and girls is beaten or sexually abused in her lifetime⁹. A United Nations Children's Fund (UNICEF) and World Health Organization (WHO) review of 21 studies of intimate partner violence against women in 2002 found that among women aged 15 to 49 years, between 20% and 29% of women in industrialized countries including Canada, New Zealand, Switzerland, the UK and the USA, 32% of women in Israel, 35% of women in Egypt, 45% of women in Ethiopia, 58% of women in Turkey, and a staggering 69% of women in Managua province in Nicaragua had been physically and/or sexually assaulted by an intimate partner in their lifetime.¹⁰

In India, a study found approximately 45% of women had been abused by their husbands,¹¹ an Iranian study estimated 66% of women in Iran

6 See the World Report on Violence and Health (Geneva 2002) at 11. Available at http://www.who.int/violence_injury_prevention/violence/world_report/en/chap1.pdf See also Seeking Safety: Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003, A Profile of Domestic Violence in Namibia at 66; Parliament of Australia, Measuring Domestic Violence and Sexual Assault Against Women: A Review of the Literature and Statistics (Dec. 12, 2006), <http://www.apf.gov.au/library/intguide/SP/ViolenceAgainstWomen.htm>

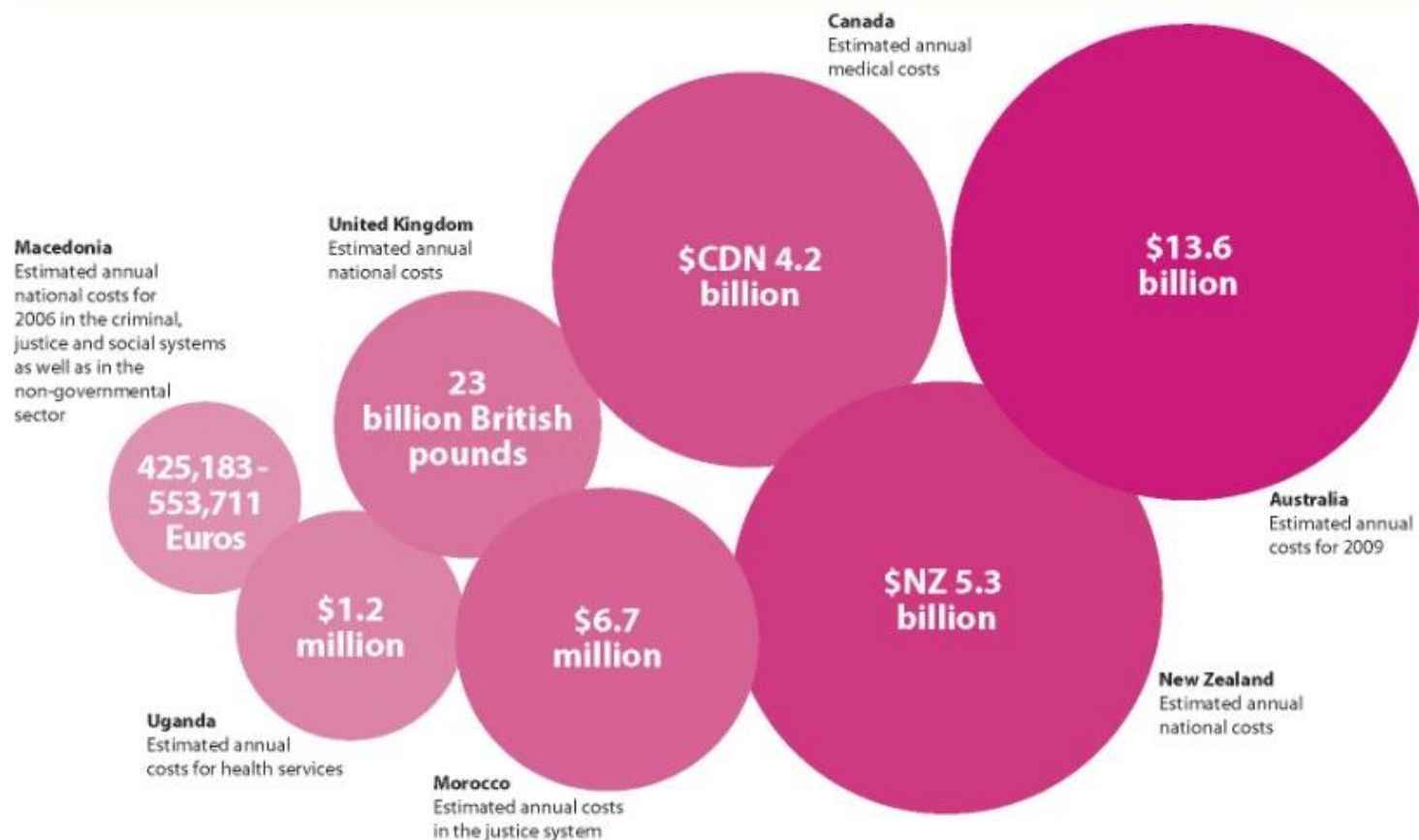
7 World Health Organization (WHO), Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non Partner Sexual Violence 2013 at 16. http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf

8 WHO, World Report on Violence and Health 89 (2002) available at http://whqlibdoc.who.int/publications/2002/9241545615_chap4_eng.pdf. A Jordanian study found 45% of women interviewed had experienced family violence. S Al-Badayneh, "Violence Against Women in Jordan" (2012) 27 Journal of Family Violence 369 at 372.

9 S Majumdar, Domestic Violence Rises with Education, Women's News (2003, November 6) available at <http://www.womensenews.org/story/domestic-violence/031106/india-domestic-violence-rises-education>

have suffered from domestic violence at least once in their lives,¹² while in Russia it has been estimated approximately 14,000 women die each year from abusive relationships.¹³ In Latin America and the Caribbean research has revealed that 10% to 40% of women in the region have experienced physical violence from their partners. In particular the study found 9% of women in Mexico and 53% of women in Bolivia had experienced physical abuse from their partner, while 17% of women in Haiti and 68% of women in Peru had experienced sexual violence by a

Costs related to domestic violence



current or previous partner.¹⁴

In the Pacific region research indicates that in Papua New Guinea domestic violence rates are 67%,¹⁵ in Kiribati in 2008 68% of women aged 15–49 had experienced physical or sexual violence, or both, by an intimate partner,¹⁶ and in the Solomon Islands 64% of women interviewed in a survey conducted by the Ministry of Women and Children Affairs in 2008 stated they had experienced domestic violence at least once in their lives.¹⁷ In Samoa, a WHO survey found that 46% of women aged 15 to 49 years had experienced violence, sexual and physical, perpetrated by their partners, and 35% of women who first had sex under the age of 15 said it was forced.¹⁸

10 A DiBranco, The Global Domestic Violence Epidemic (2009, November 28) Change.org. available at http://womensrights.change.org/blog/view/the_global_domestic_violence_epidemic.

11 UN Committee on the Elimination of Discrimination Against Women (CEDAW), Fifth Periodic Report of the Russian Federation, 1999 CEDAW/C/USR/5 at 38. Available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw26/usr5.pdf>

12 Economic Commission for Latin America and the Caribbean (ECLAC) No More! The Right of Women to Live a Life Free of Violence in Latin America and the Caribbean (2007) at 5. Available at <http://www.eclac.cl/publicaciones/xml/7/31407/Nomore.pdf>

15 Papua New Guinea Law Reform Commission, 'Final Report on Domestic Violence' (Report No.14, 1992).

16 SPC, Kiribati Family Health and Support Study: A Study on Violence Against Women and Children, (2010) at 2. Online at http://210.7.20.137/Publications/Talk_Gender/VAWC_Study_Kiribati_Web.pdf

17 Solomon's Domestic Violence Increasing (Radio Australia broadcast Jan. 19, 2009), <http://www.radiaostralia.net.au/pacbeat/stories/200901/52469076.htm>.

18 WHO, Multi-Country Study on Health and Domestic Violence against Women (2005) at 28. Available at http://www.who.int/gender/violence/who_multicountry_study/Chapter3-Chapter4.pdf; H Slegel, G Barker, B Ruratotoye & T Shand, Gender Relations, Sexual Violence and the Effects of Conflict on Women and Men in North Kivu, Eastern Democratic Republic of Congo: Preliminary Results of the International Men and Gender Equality Survey, Capetown, 2012.

A recent global study on homicide found that in Europe in 2008 over half of female victims were murdered by family members and in Australia, Canada, Israel and South Africa between 40% and 70% of female murders were linked to intimate partner or family related violence.¹⁹ In Guatemala it has been estimated that at least one-third of all murders of women are the result of domestic violence.²⁰

In addition, so-called “honor killings” take the lives of thousands of women every year, mainly in North Africa, the Middle East, Western Asia and parts of South Asia,²¹ indigenous women globally experience more domestic violence than non-indigenous women,²² in some countries lesbians, or women and girls perceived to be lesbian, are beaten, raped or married by family members to either punish them or to “correct” their sexual identity,²³ and in some regions women living with HIV are at risk of violence from their husbands and families.²⁴ Moreover, in post crisis situations domestic violence often increases due to a range of factors including the particular vulnerability of women and children after the breakdown of institutions such as the police and emergency services, the continued availability of weapons, the “culture of violence” that ensues from war, frustration experienced by male family members and partners because of the lack of jobs, shelter, and basic services.²⁵ In post crisis contexts a larger number of households are headed by women who take on additional responsibilities such as providing for families and wider communities, tending to the fields and assuming health care functions. This may give rise to resentment and backlash from male family and community leaders because of real and perceived changes to their authority, societal positions and opportunities.²⁶ During the post crisis recovery and reconstruction processes domestic violence is often ignored or relegated to low-priority status compared to other concerns. Security and peace, for example, are often defined without reference to women’s experiences particularly in relation to domestic violence. A post crisis situation, however, can provide unique opportunities for law reform and UNDP’s governance and resilience mandates and expertise are natural entry points for domestic violence law reform.

2.3 Harms and Costs of Domestic Violence

Domestic violence causes devastating harms to victims, their families and their communities. UNDP’s mandate to foster democratic governance, rule of law, access to justice, citizen security, gender equality and women’s empowerment in all contexts provides a clear entry point for UNDP interventions supporting domestic violence law reform. The lack of security created by domestic violence hinders human development in areas such as health, housing, education and employment by limiting the choices and liberties of victims and impacting on their daily lives in their homes, jobs, and communities. Domestic violence also results in economic costs to victims, their communities, the state and therefore society at large.²⁷ UNDP support for domestic violence law reform also directly correlates therefore with its goals of sustainable development, eradicating poverty and encouraging economic growth all of which are impacted upon by the significant costs and consequences of domestic violence.

Victims of domestic violence typically suffer a range of physical injuries (lacerations, bruises, broken bones, head injuries, internal bleeding), with acute short term and chronic long-term effects, including life-long disability and sometimes death.²⁸ Domestic violence increases vulnerability to HIV by reducing women’s ability to negotiate protected sex²⁹ and sexual violence in particular significantly increases the risk for women to contract HIV because physical injuries allow an easy transmission of the virus.³⁰

¹⁹ UN Office on Drugs and Crime, *Global Study on Homicide* (2011) at 58. Available at http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf

¹³ K Ruhl, “Guatemala’s Femicides and the Ongoing Struggle for Women’s Human Rights: Update to CGRS’s 2005 Report Getting Away with Murder” (2007) 18 *Hastings Women’s Law Journal* 199 at 201.

¹⁴ United Nations Population Fund (UNFPA), *The State of the World’s Population*, 2000, Chapter 3. Available at <http://www.unfpa.org/swp/2000/english/cho3.html>

²² Permanent Forum on Indigenous Issues 11th Session, *Combating Violence Against Indigenous Women and Girls: Article 22 of the UN Declaration on the Rights of Indigenous Peoples: Report of the International Group Meeting* 2012 E/C.19/2012/6.

²³ T Biblarz & E Savci, “Lesbian, Gay, Bisexual and Transgender Families” (2010) 72(3) *Journal of Marriage and Family* 480.

²⁴ WHO & UNAIDS, *Addressing Violence Against Women and HIV/AIDS. What Works?* (2010) at 9.

¹⁹ UN Secretary-General, *Women, Peace and Security* at 15. Available at <http://www.un.org/womenwatch/daw/public/eWPS.pdf> International Rescue, *Let me Not Die Before My Time: Domestic Violence in West Africa*, 2012 at 12. Available at http://www.rescue-uk.org/sites/default/files/IRC_Report_DomVioWAfrica_UK.pdf

²⁰ Ministry for Economic Cooperation and Development (Germany), *Promoting Good Governance in Post-Conflict Societies* 2005 at 8. Available at <http://www2.gtz.de/dokumente/bib/05-0032.pdf>

²¹ International Centre for Research on Women (ICRW) *Intimate Partner Violence. High Costs to Households and Communities* 2009. Available at <http://www.icrw.org/files/publications/Intimate-Partner-Violence-High-Cost-to-Households-and-Communities.pdf>

²² L Avila-Burgos, R Valdez-Santiago, M Hajar, A del Rio-Zolezzi, R Rojas-Martínez, & C Medina-Solís, “Factors Associated with Severity of Intimate Partner Abuse in Mexico: Results of the First National Survey of Violence Against Women” (2009) 100(6) *Canadian Journal of Public Health* 436.

²³ C Onyejekwe, “The Inter-Relationship Between Domestic Violence and HIV/AIDS in South Africa” (2004) 6(1) *Journal of International Women’s Studies* 34-40.

²⁴ F Romão, L Mabunda, C Buque G Somo, F Mulher & O da Barca Vieira, *Violence Against Women in Mozambique* 2009 at 14.

Victims may also suffer a range of psychological injuries including low self-confidence, depression, suicidal thoughts, flashbacks, nightmares, anxiety, emotional numbing, and insomnia.³¹ Children can also be profoundly affected by witnessing violence and there is a growing body of research documenting the major effects of domestic violence on a child's psychological, physical, educational, and social wellbeing.³² The UN estimates that "between 133 and 275 million children worldwide witness domestic violence annually, noting that the exposure of children to violence in their homes on a frequent basis, usually through fights between parents or between a mother and her partner, can severely affect a child's well-being, personal development and social interaction in childhood and adulthood."³³ Research indicates that many domestic violence offenders were themselves child victims of domestic violence³⁴

Victims may suffer a range of economic costs such as medical bills, legal bills, and loss of income if they are unable to retain their employment. Additionally, costs to the victim are incurred when a woman leaves a violent relationship, such as the costs of moving, replacing damaged or lost household items and replacing school uniforms and equipment when children change schools.³⁵ Anxiety and fear can also lead victims to make a range of detrimental changes to their lifestyle, such as forgoing educational and employment opportunities and detaching from public life which, ultimately, is a major obstacle to their economic independence and full participation in shaping the economic, social and political life of their countries.³⁶

Domestic violence results in significant direct and indirect costs to society at large and to the state impacting on a country's ability to develop. General costs to society include chronic health costs; losses generated by reduced productivity, loss of wages or employment due to absence from the workplace or injury; and reduced performance due to stress or trauma which impact on employers who bear the costs of reduced output, sick leave, and expenses related to the recruitment of replacements. Studies have also noted the costs generated by children who may need counseling services due to having witnessed or experienced violence, special education and the costs generated by a reduced potential to achieve positive outcomes in education and in future employment.

Costs to the state may include the provision of a range of facilities, resources, and services to victims, such as crisis services, accommodation services, legal services, and medical services.³⁷ For example, a study of intimate partner violence in Uganda estimated that the use of health services by domestic violence victims cost the state \$1.2 million annually.³⁸ There is also the cost to the state of administering social welfare payments to women who leave abusive situations (in countries with a social security system) and the costs of victim compensation schemes (in countries with victim's compensation schemes). The state also directly bears other administrative costs related to domestic violence such as drafting and revising laws, funding ministries responsible for the implementation of domestic violence laws and policies, funding research initiatives and running public information programs. Additionally, there are the costs associated with procedures relating to the offenders including policing, court trials, penal costs and other related costs such as administering community sentences. For example, a study in Morocco estimated the annual cost of domestic violence to the justice system at \$6.7 million.³⁹

Some studies have attempted to estimate the national costs of domestic violence. In an Australian study the authors estimated a national cost of A\$13.6 billion for the 2009, and predicted the costs of 2021-22 to be at A\$15.6 billion of which an estimated 19% would be borne by the state.⁴⁰ Other studies documenting the national economic costs of domestic violence include a study in New Zealand where the annual costs

25 G Brewer et al., "Domestic Violence: The Psychosocial Impact and Perceived Health Problems" (2010) 2 Journal of Aggression, Conflict & Peace Resolution 12 at 13.

26 J Fantuzzo & W K. Mohr, "Prevalence and Effects of Child Exposure to Domestic Violence" (1999) 9 Future Child. 21 at 26-28; UNICEF, Behind Closed Doors: The Impact of Domestic Violence on Children 2006. Available at <http://www.unicef.org/protection/files/BehindClosedDoors.pdf>

27 P Pinheiro (Independent Expert for the United Nations Secretary-General's Study on Violence against Children), World Report on Violence against Children 2006 at 70. Available at <http://www.unicef.org/violencestudy/1.%20World%20Report%20on%20Violence%20ag%20ainst%20Children.pdf>

34 See E Fulu, X Warner, S Miedema, R Jewkes, T Roselli & J Lang, *Why Do Some Men Use Violence Against Women and How Can we Prevent It? Quantitative Findings From the UN Multi-Country Study on Men and Violence in Asia and the Pacific* (2013) at 4 where of the men interviewed 50%-80% had experienced childhood emotional abuse and neglect; 13% - 67% had experienced childhood physical abuse and 6% - 37% had experienced childhood sexual abuse.

28 K Ling Chan & E Yin-Nei Cho, "A Review of Cost Measures for the Economic Impact of Domestic Violence" (2010) 11 Trauma, Violence & Abuse 129 at 138.

29 V Banyard, S Potter & H Turner, "The Impact of Interpersonal Violence in Adulthood on Women's Job Satisfaction and Productivity: The Mediating Roles of Mental and Physical Health" (2011) 1 Psychological Violence 16 at 24-25.

30 WHO, Economic Dimensions of Interpersonal Violence 4 (2004).

31 International Centre for Research on Women & United Nations Population Fund Intimate Partner Violence. High Costs to Households and Communities, 2009 at 10. <http://www.icrw.org/files/publications/Intimate-Partner-Violence-High-Cost-to-Households-and-Communities.pdf>

32 ICR, Intimate Partner Violence. High Costs to Households and Communities, 2009 at 10. <http://www.icrw.org/files/publications/Intimate-Partner-Violence-High-Cost-to-Households-and-Communities.pdf>

33 National Council to Reduce Violence against Women and their Children (Australia), The Cost of Violence Against Women and their Children 2009. Available at

of domestic violence were estimated at \$NZ 5.3 billion,⁴¹ a study in Canada where annual medical costs were estimated at \$CDN 4.2 billion,⁴² and a study in the United Kingdom which estimated the annual cost of domestic violence at 23 billion British pounds.⁴³ A study in Macedonia, which excluded costs arising within the healthcare sector and the costs borne by the victims themselves, estimated the annual national costs for 2006 in the criminal, justice and social system as well as in the non-governmental sector at between 425,183 and 553,711 Euros. The study also estimated that the costs of a full institutional response, which would be incurred if all women who suffered from domestic violence sought and received help, was between 248,532,788 and 300,159,670 Euros.⁴⁴ These estimates may be much less than the actual costs as they are most likely based on rates of reporting that do not reflect the actual prevalence of domestic violence.

2.4 Legislation in World Legal Systems

Legislation in the form of statutes, decrees, orders and regulations plays a vital role in all of the world's major legal systems. The legal systems of the world, although shaped by each country's unique history and incorporating individual variations, are based on one of three systems: civil law, common law, and religious law – or combinations of these. Customary law, where a certain legal practice is followed and community members consider it to be law, exists within and alongside all three formal systems of law. It is typically inferior to legislation however in some regions it is given greater status through the operation of constitutions or legislation, for example in many countries of the Pacific where custom is given constitutional status.⁴⁵ A number of countries are pluralistic, that is there are a number of different legal systems being used at the same time. A prominent example of a pluralist system is the Indian legal system which follows a mixture of civil, common law, customary and religious law with separate personal law codes applying to Muslims, Christians and Hindus.⁴⁶

In the civil law system legislation, usually in the form of a code, is the primary source of law. A code contains all of the laws of a country, usually in the form of articles arranged by subject matter. Civil law codes can be amended through the enactment of a new statute which is inserted into the code or through the addition or repeal of existing articles. Civil law is the most widespread system of law around the world in a total of approximately 150 countries. It originated in Western Europe and was transplanted in parts of Asia, Africa and Latin America in various forms through the colonization of those regions by the Netherlands, Portugal, Spain and Belgium.

Common law is a system of law with two primary sources, first, case law which is decisions made by judges and, second, legislation made by a legislature. Legislation often covers areas not previously incorporated into the law through the decisions of judges (such as domestic violence) and generally overrules case law. Common law courts use an adversarial system in which two sides present their cases to a neutral judge. In contrast the civil law courts use an inquisitorial approach where an examining judge develops the evidence and the arguments for both sides during the investigation phase. The common law system operates in every country that was colonized at some time by the United Kingdom.⁴⁷

A religious legal system is one in which religion, often in the form of a religious document, is the primary source of law. The main religious legal systems are sharia in Islam, Halakha in Judaism, and canon law which is used by some Christian groups. The Islamic legal system of sharia is the most widely used religious legal system. The majority of the rulings of sharia law are based on the Qur'an (religious text) and Sunnah (tradition), while a small proportion of its rulings are based on the Ulema (jurists) who use the methods of Ijma (consensus of opinion), Qiyas (reasoning by analogy), Ijtihad (research) and Urf (common practice) to derive Fatwā (legal opinions).⁴⁸

The role of legislation in countries practicing sharia law varies. In some Muslim majority countries such as Mali, Kazakhstan, Indonesia and

http://www.facs.gov.au/sa/women/pubs/violence/np_time_for_action/economic_costs/Documents/VAWC_Economic_Report.PDF

34 S Snively, "The New Zealand Economic Cost of Family Violence" (1995) 4 Social Policy Journal of New Zealand 1 at 11.

35 L Greaves, O Hankivsky & J Kingston-Reichers, *Selected Estimates of the Costs of Violence Against Women*. London, Ontario: Centre for Research on Violence Against Women and Children Publication Series, The University of Western Ontario, 1995.

36 S Walby (Women and Equality Unit, National Statistics), *The Cost of Domestic Violence 2004* at 12. Available at http://www.devon.gov.uk/cost_of_dv_report_septo4.pdf

37 Y Gancheva et al, *The Costs of Domestic Violence against Women in the Former Yugoslav Republic of Macedonia: A Costing Exercise for 2006* Economic Policy Research Institute, Skopje. February 2010. Available at: <http://www.unifem.sk/uploads/doc/The%20costs%20of%20DVAW%20in%20ofyr%20Macedonia%20-%20eng.pdf>.

38 See for example the Solomon Islands where the Constitution gives constitutional status to customary law permitting its observance in a range of situations including land, marriage, divorce and other personal laws, *Constitution of Solomon Islands 1978*, Schedule 3 s 3(1); see also the *Constitution of Vanuatu 1980*, s 51 s 52.

39 G Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism and Gender Equality in India* (Cambridge University Press: Cambridge, 2011); see also J Hussain, "More than One Law for All Legal Pluralism in Southeast Asia" (2011) 7(4) *Democracy and Security* 374.

40 See V O'Connor (International Network to Promote the Rule of Law) Practitioners Guide: *Common Law and Civil Law Traditions*, 2012 for an overview and comparison of the common and civil law systems. Available at http://inprol.org/sites/default/files/publications/2012/common_law_civil_law_pg_final.pdf

41 V Nimehielle, "Sharia Law in the Northern States of Nigeria: To Implement or Not to Implement, the Constitutionality is the Question" (2004) 26(3) *Human Rights Quarterly* 730 at 738.

Turkey which are secular, the role of sharia is limited to personal and family matters and legislation is the primary source of law for all other areas.⁴⁹ Other Muslim majority countries including Pakistan, Afghanistan, Egypt, Yemen, Jordan, Sudan, Morocco and Malaysia have legal systems strongly influenced by sharia, but their constitutions are authoritative and legislation plays a primary role in their legal systems.

Finally, some Muslim majority countries such as Saudi Arabia and some of the Gulf states have a legal system based on classical sharia and do not have constitutions or legislatures. Their rulers have limited authority to change laws, since law is based on sharia as it is interpreted by their religious scholars.⁵⁰ However, there is legislation in the form of royal decrees in these countries which are subordinate to sharia law. Even in these countries therefore domestic violence legislation can be present although to date, Saudi Arabia is the only such country with a royal decree on domestic violence.

2.5 Importance of Domestic Violence Legislation

Domestic violence legislation emerged in response to the recognition that general legislation, criminal and civil, was unable to protect victims and reduce domestic violence. Instead targeted legislation that focused on the particular characteristics of domestic violence was necessary as part of an effective response and prevention strategy.⁵¹ The specific benefits of domestic violence legislation can be summarized as follows.

First, both protection orders and domestic violence offences have practical benefits for victims. Protection orders assist in preventing an offender from making contact with, harming or harassing a victim of domestic violence and they enable a victim to remain in the family home. Domestic violence offences punish the offender and can operate to deter the offender (and others) from committing further abuse. General criminal offences such as assault, battery and grievous bodily harm are not well-suited to address the complexity and specificity of domestic violence. First, they can typically only be invoked to address physical violence. Domestic violence manifests not just as physical violence but also as sexual abuse, property damage, emotional and psychological abuse, intimidation, harassment, stalking, economic deprivation, or threats of any of the above. Second, general criminal offences are typically conceptualized as a single act whereas domestic violence is rarely a single incident. Instead, it commonly forms a pattern of abuse within a continuum of violence and control. Finally, penalties for assault and battery are often insufficient to adequately punish and deter offenders for the severity and damaging impact of domestic violence.

Second, the symbolic effect of domestic violence legislation (often overlooked) is considerable. Targeted domestic violence offences makes a clear public statement that “domestic violence is a crime, is wrong, and should be punished” and in combination with a system of protection orders counteracts the social messages that persist that violence in a domestic setting is not as “serious” as violence between strangers.⁵² Evidence suggests that the presence of domestic violence legislation increases awareness in the community of what behaviours amount to domestic violence and fosters the view that women have a legal right to be free of violence.⁵³

Third, the preventative role that domestic violence legislation can play has been highlighted by many including the Secretary-General in the 2013 Report on the Prevention of Violence against Women and Girls which stated “A comprehensive legal framework that not only prohibits and criminalizes violence against women and girls but also provides for prevention measures, support to and protection of survivors is crucial”. The Report also praised prevention measures in the domestic violence legislation of some countries that mandated educational programmes and awareness-raising⁵⁴

Fourth, domestic violence legislation challenges the notion that culture, tradition and custom justify family violence against women and children by setting the acceptable standards of conduct within family relations. In many regions of the world domestic violence (if it is dealt with at all) is dealt with by the village, local community or informal courts in accordance with local customs and traditional practices such as through

⁴² T Lindsay (ed), *Indonesia: Law and Society* (Sydney: Federation Press, 2nd ed, 2008) at 3.

⁴³ E Hossein, “Nature and Development of Law in Islam and the Rule of Law Challenge in the Middle East and the Muslim World” (2010-2011) 26 *Connecticut Journal of International Law* 329 at 350.

⁴⁴ A Vesa, “International and Regional Standards for Protecting Victims of Domestic Violence” (2004) 12 *American University Journal of Gender and Social Policy* 309 at 317; R Coomaraswamy, Report of the Special Rapporteur on Violence Against Women: Its Causes and Consequences, Commission of Human Rights, 1997, 53rd Session at para [34] (UN Doc E/CN.4/1997/47); I Jalal, Good Practices in Legislation on Violence Against Women: A Pacific Islands Regional Perspective 2008 at 4 (UN Doc EGM/GPL/VAW/2008/EP.07).

⁴⁵ H Douglas, “The Criminal Law’s Response to Domestic Violence: What’s Going On?” (2008) 30 *Sydney Law Review* 439 at 442; D Corker, “Race Poverty and the Crime-Centred Response to Domestic Violence” (2004) 10 *Violence Against Women* 1331 at 1332, 1348.

⁴⁶ See Seeking Safety note 5 at 313-314. Respondents in a 2007/2008 survey in eight Namibian regions were asked to identify any national laws and almost 60% cited the Domestic Violence Act.

⁵⁴ Commission on the Status of Women, *Agreed Conclusions on the Elimination and Prevention of all Forms of Violence Against Women and Girls* 2013 E/CN.6/2013/11 at 7.

reconciliation and forgiveness ceremonies. While reconciliation and forgiveness ceremonies, which typically prioritize community and family rather than the individual, may be effective for resolving other issues (such as property disputes) domestic violence requires the recognition of both the individual rights of the victims and the recognition of the problem domestic violence poses for communities as a whole. Many countries have accepted that cultural practices that harm women are unacceptable and that culture cannot be used as an excuse for domestic violence. This is evidenced by the enactment of domestic violence legislation in countries where religion and customary practices have a strong presence such as in Africa, Asia, the Pacific and the Arab states.⁵⁵

UNDP Support for Research into Formal and Informal Justice Mechanisms

UNDP in TIMOR LESTE

UNDP is supporting research in Timor Leste to examine the reasons behind the choices that domestic violence victims make between formal justice or traditional means of mediation or justice. This research aims to provide insights into the specific challenges women face at the community level as well as within the formal system of law.

The research aims to identify corrective measures, either in the domestic violence legislation or in its enforcement, as well as other ways of optimizing the role of traditional or informal justice mechanisms in preventing domestic violence and protecting vulnerable women and children from threats and risks. The initial findings indicate that those incidents defined as domestic violence under the Law against Domestic Violence are considered in some communities as private family matters that at best merit mediation by family elders and community mediation mechanisms. The research could lead to measures that will enhance prevention of domestic violence and promote protection of the human rights of women and children.

Finally, domestic violence legislation enables countries to meet their international obligations. For example, a number of international and regional human rights instruments require states parties to take legal measures to prevent domestic violence.

Although CEDAW does not include a specific article on gender based violence its gravity was recognized by the CEDAW Committee in General Recommendation 19 on violence against women. General Recommendation 19 requires states parties to introduce measures to overcome family violence including “criminal penalties where necessary and civil remedies in the case of domestic violence”.

The CEDAW Committee has also consistently emphasized the need to incorporate specific and targeted domestic violence legislation into national frameworks. The African Protocol on the Rights of Women (2005) requires states parties to “enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public” and to “adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women and ‘punish the perpetrators of violence against women.”

Likewise Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994) requires states parties to include in their domestic legislation “penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women” and to “establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures” and “to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women.”

⁴⁷ See for example the Domestic Violence Act 2008 (Botswana); the Protection from Domestic Violence Act 2008 (Jordan); Law on Domestic Violence Prevention and Control 2007 (Vietnam) and the Family Protection Act 2008 (Vanuatu).

Part 3 Policy Content of Good Practice Domestic Violence Legislation

Part 3 identifies and considers the essential components of good practice domestic violence legislation. A technical understanding and good working knowledge of those components will assist UNDP staff to provide appropriate support to countries considering or in the process of enacting new domestic violence legislation or reviewing existing domestic violence legislation. There are three different approaches used globally to incorporate domestic violence provisions into national legal frameworks.

The first and most common approach is to enact stand-alone specific domestic violence legislation. All stand-alone legislation enacted to date includes a civil system of protection orders. A small number of stand-alone laws include domestic violence criminal offences, and an increasing number impose a variety of duties on the state and provide compensation provisions providing further protection for victims.⁵⁶

A second approach is to modify existing civil and criminal legislation or codes by adding domestic violence provisions.⁵⁷

A third approach, favored more recently in some Latin American and a few African countries, and also adopted in Afghanistan is to enact broad gender-based violence legislation.⁵⁸ This legislation, in contrast to stand-alone specific domestic violence legislation, primarily focuses on the criminalization of domestic violence along with a broad range of other forms of gender-based violence particularly relevant to the country or region. For example, in Latin America the criminal offences included in gender based violence legislation include: workplace violence; institutional violence; media violence; pornography; obstetric violence; and femicide.⁵⁹ In Rwanda the criminal offences included are; polygamy, sexual slavery, and gender based human trafficking⁶⁰ while in Afghanistan the criminal offences include compulsory prostitution, baad (forced marriage of a woman or girl in retribution for a serious offence) and burning or spraying chemical substances.⁶¹ The gender-based violence laws of Latin America and Afghanistan also place wide ranging duties on the state to undertake measures to prevent all forms of gender based violence such as developing national action plans, undertaking education and media campaigns, collecting data and statistics, and establishing and supporting a range of services for victims.

The presence of stand-alone domestic violence legislation is argued by some to be the strongest approach of the three since it brings the issue of domestic violence to the forefront and acknowledges its structural dimensions, rather than viewing it as an “addition” to other societal crimes and issues.⁶² However, any of the three approaches can be effectively used to advance legislative compliance with CEDAW, to provide protection to victims of domestic violence and to contribute to a broader strategy to end domestic violence. The critical element is the incorporation of the full range of good practice components (detailed below) into the national legal framework.

The key components of good practice domestic violence legislation

(which should be framed to reflect national and regional differences) include the following:

1. A **purposes** section that sets out the main aims of domestic violence legislation including to ensure the protection of all persons who experience domestic violence, to recognize it as unacceptable behavior and to prevent domestic violence;
2. An **appropriate and comprehensive definition of domestic violence** that encompasses physical abuse, sexual abuse, emotional abuse, intimidation, harassment, stalking, economic deprivation, property damage, threats or attempts of any of

48 See for example Law on the Prevention of Domestic Violence 2010 (Azerbaijan); Protection Against Domestic Violence 2005 (Bulgaria); Law on Domestic Violence Prevention and Control 2007 (Vietnam).

49 See for example Article 207 (a domestic violence offence) which was inserted into the Penal Code (Poland) in 2007.

50 See for example, in Afghanistan In the Name of Allah the most Compassionate the Most Merciful Law on the Elimination of Violence Against Women 2009; in Nicaragua the Law Against Violence Against Women 2012.

51 See for example Law to Protect, Prevent, Punish and Eradicate Violence Against Women in Areas in which to Develop their Interpersonal Relations 2009 (Argentina).

52 Law on Prevention and Punishment of Gender-Based Violence 2008 (Rwanda).

53 See for example, in Afghanistan In the Name of Allah the most Compassionate the Most Merciful Law on the Elimination of Violence Against Women 2009 (Afghanistan).

54 R Commaraswamy, A Framework for Model Legislation on Domestic Violence (UN Doc E/CN.4/1996/53/Add.2) at 2(d) & 4.

the above and context specific harms such as honor killings, dowry violence and acid throwing;

3. **The extension of protection** to the full range of persons who experiences or is at risk of experiencing domestic violence including family members, spouses, foster children, persons in same-sex relationships, and persons providing care or home help to another;
4. **A system of protection orders, emergency protection orders and occupation orders** with procedures that account for local conditions such as providing easy access to orders for women living in remote or rural areas where there are no courts;
5. A comprehensive mechanism for the **enforcement** of protection orders;
6. Targeted domestic violence offences that include **context specific harms**;
7. The provision of **compensation** to victims by the state or the offender;
8. **State duties** that include the establishment of victims support services such as housing, counseling and shelters, a duty to educate the public and to provide training on domestic violence to police, judges and other service providers, and an obligation to compile statistics on domestic violence and analyze them;
9. The provision of **adequate funding** for the fulfillment of state duties and an effective **monitoring mechanism** to ensure the state fulfils the duties placed upon it; and
10. An **obligation** on the police and other authorized state actors to **investigate** domestic violence, to **apply for and enforce protection orders and to proceed with criminal prosecutions** where appropriate and in accord with pro-prosecution policies and to **assist victims to access shelters, medical and other services, and compensation**.

3.1 Providing a comprehensive legal definition of domestic violence

A key component in both civil and criminal domestic violence legislation is a comprehensive and clear definition of what constitutes domestic violence.

The definition is critical because it determines when a victim is protected by the law and what behavior by offenders will trigger investigation and prosecution. It also sets a community standard of what behavior will be considered to be domestic violence which, as previously discussed, is an important component of prevention. The definition of domestic violence must take into account the many forms of physical and non-physical violence that it can take. The definition should therefore include the following;

- physical abuse,
- sexual abuse,
- intimidation,
- harassment,
- stalking,
- economic deprivation,
- property damage,
- psychological and emotional abuse, allowing a child to witness domestic violence and threats of any of the above and
- context specific harms that occur in a particular culture or tradition.

A fuller explanation and definition of each of these forms of domestic violence follows.

*UNDP Support Leads to a Broader Definition of Domestic Violence***UNDP in IRAQ**

In Iraqi Kurdistan (an autonomous entity within the Republic of Iraq) a Domestic Violence Bill was initially drafted without UNDP support. To support an improved policy content of the Bill, while retaining national ownership, UNDP Iraq contracted a consultant to undertake revisions of the Bill. The person was selected in consultation with the relevant MPs who did not want to redraft the Bill but were receptive to substantive revisions. In the six weeks available to introduce changes to the Bill, UNDP with the support of the consultant:

- prepared a comparison between the existing draft and model domestic violence legislation identifying gaps and weaknesses;
- overviewed the domestic violence legislation in five other countries to provide comparisons;
- facilitated meetings with key members of the committee to move the process forward and to prepare for wider consultation meetings with other members;
- facilitated consultations in two governorates which brought relevant MPS and government officials together with civil society organizations.

The draft improved dramatically as a result of the UNDP intervention. Substantive improvements included a clearer, broader definition of domestic violence, the inclusion of female genital mutilation as a form of domestic violence and an obligation on the government through the Ministry of Labor and Social Affairs to establish domestic violence shelters for victims. The Bill was passed a week after the last consultation without any changes to the revisions. (Resolution No (8) of the year 2011 Anti-Domestic Violence Law).

Defining physical and sexual abuse

Physical abuse can be defined as any physical act (i.e. punching, beating, shaking, throwing, kicking, biting, burning) which causes physical injury or pain. It can also include context specific physical abuse such as acid throwing or dowry violence.

Sexual abuse can be defined as any act of a sexual nature with a child or a non-consenting adult. It may involve marital rape, physically forcing a person to have sex, to watch sex by others or to participate in demeaning or degrading sexual acts, making a person afraid to say no to sex, violence or name calling during sex, or denying contraception or protection from sexually transmitted diseases and HIV. Sexual and physical abuse instills an environment of constant fear and is a powerful means for an offender to keep family or household members under control.⁶³

GOOD PRACTICE EXAMPLE**Combating of Domestic Violence Act 2003 (Namibia)**

s2 (1). For the purposes of this Act, “domestic violence”, within the context of a domestic relationship, means engaging in any of the following acts or courses of conduct:

- (a) physical abuse, which includes:
 - (i) physical assault or any use of physical force against the complainant;
 - (ii) forcibly confining or detaining the complainant; or
 - (iii) physically depriving the complainant of access to food, water, clothing, shelter or rest;
- (b) sexual abuse, which includes:
 - (i) forcing the complainant to engage in any sexual contact;
 - (ii) engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;
 - (iii) exposing the complainant to sexual material which humiliates, degrades or violates the complainant’s sexual integrity; or
 - (iv) engaging in such contact or conduct with another person with whom the complainant has emotional ties.

⁶³ These definitions are drawn from legislative examples.

DRAFT

Defining stalking and/or harassment

Stalking and harassment can be defined as the willful, repeated and unwanted following, watching and/or harassing of a person and can include loitering outside the person's home, place of work or place of leisure, contacting the person through phone or electronic means, keeping the person under surveillance; leaving unsolicited materials or offensive materials, or interfering with the person's property or acting in any way that may cause the person apprehension or fear.⁶⁴

Stalking, overwhelmingly perpetrated by ex-partners,⁶⁵ can result in negative, intimidating and harmful consequences for the victim⁶⁶ and it can precipitate serious, violent acts.⁶⁷

Defining emotional, verbal and psychological abuse

Emotional, verbal and psychological abuse can be defined as the systematic and patterned use of words or actions to control, isolate, intimidate, degrade or dehumanize a person. It may include a pattern of one or more of the following abuses: insults, criticisms, aggressive demands or expectations, threats, rejection, neglect, blame, emotional manipulation and control, isolation, punishment, terrorizing, ignoring or teasing.

A good practice definition should also include exposing a child to domestic violence which can have devastating effects and may increase the likelihood that the child (especially male children) may use violence as an adult.⁶⁸ For example, the draft Cook Islands Family Law Bill includes the clause that "a person psychologically abuses a child if that person physically, sexually, emotionally, verbally or psychologically abuses a person with whom the child has a domestic relationship." It may also include pet abuse as illustrated in the example of the Philippines below.

Emotional, verbal and psychological abuse is often subtle and can be more difficult to identify than physical abuse. It is used by an offender to lower a victim's sense of self-worth and can leave a person feeling fearful, insignificant, unworthy, untrusting, and that they were bad and deserving of punishment.⁶⁹

GOOD PRACTICE EXAMPLE

Anti-Violence against Women and their Children Act 2004 (Philippines)

53 C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity.

It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

Defining economic abuse

Economic abuse can be defined as the unequal control of money or other resources and can take different forms. It may involve a person

55 For good practice definitions of harassment see Domestic Violence Act 1996, s2(h) (Guyana) Domestic Violence Act 2008, s2 (Botswana).

56 P Mullen, M Pathe & R Purcell, *Stalkers and Their Victims* (Cambridge: Cambridge University Press, 2000) at 89.

57 R Purcell, M Pathe & P Mullen, "When Do Repeated Intrusions Become Stalking?" (2004b) 15(4) *Journal of Forensic Psychiatry and Psychology* 571.

58 T McEwan, P Mullen & R MacKenzie, "Anti-Stalking Legislation in Practice. Are We Meeting the Communities Needs?" (2007) 14(2) *Psychiatry, Psychology and Law* at 208.

59 J Fantuzzo & W Mohr, "Prevalence and Effects of Child Exposure to Domestic Violence" (1999) 9 (3) *The Future of Children* 21, 26–28; J Osofsky, "The Impact of Violence on Children" (1999) 9 (3) *The Future of Children* 33. This is an important recognition that, even if a child has not been the specific target of violence, indirect exposure to domestic violence is so harmful that it may constitute a form of child abuse in its own right.

60 For further good practice examples of definitions of emotional, verbal and psychological abuse refer to Law on Preventing and Combating Family Violence 2008, Article 2 (Moldova); Law Against Domestic Violence 2010, Article 2 (Timor Leste).

withholding from another person financial information, physical resources such as food, clothes, necessary medications or shelter, preventing a person from working or choosing an occupation, controlling the money or controlling how money is spent or forcefully taking money or threatening a person for money, concealing joint assets or shared money, or keeping a person impoverished.⁷⁰

Non-physical forms of domestic violence such as economic abuse are often not perceived by the community as “real” violence, despite research consistently showing they may be the cause of severe and ongoing harm and that they may prevent a person from leaving an abusive relationship or living situation.⁷¹

GOOD PRACTICE EXAMPLE

Domestic and Family Violence Act 2007 (Northern Territory, Australia)

s8. “**Economic abuse**”, of a person, includes any of the following conduct (or any combination of them):

1. Coercing the person to relinquish control over assets or income - example of coercion - using stand-over tactics to obtain the person's credit card.
2. Unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent;
3. Unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property;
4. Withholding money reasonably necessary for the maintenance of the person or a child of the person.

Defining other context specific forms of domestic violence

As well as the forms of domestic violence described above which are common in all countries there are other forms of domestic violence which are context specific.

Examples include infanticide (occurs primarily in South Asia, the Middle East and in sub-Saharan Africa), honor killings (occurs primarily in South Asia and the Middle East), forced impregnation, acid throwing (common in South Asia), bride price and related killings, virginity testing, harmful practices related to sexuality, menstruation and childbirth, witch hunting and sorcery killings (occurs in Sub-Saharan Africa, rural North India and Papua New Guinea), baad - the forced marriage of a woman or girl as blood money for a murder (occurs in Afghanistan and Pakistan), child, early and forced marriage (occurs in Sub-Saharan Africa and South Asia), unmatched marriage (whereby a young girl is married to a much older man), widow cleansing - forced sex with a brother or close male relative of the deceased husband (occurs in parts of Africa and Asia), practices whereby girls are dedicated to temples or monasteries and may be treated as prostitutes (such as the Devdasi system in India and the Jhuma and Jari systems in Nepal), and dowry-related violence (common in South Asia). All of these examples are also found in migrant communities throughout the world. Where relevant such harms should be included in the definition of domestic violence.

GOOD PRACTICE EXAMPLES

1. Domestic Violence Act 2006 (Zimbabwe)

s3 (1). For the purposes of this Act, domestic violence means any unlawful act, which results in death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent and includes the following: (i) abuse derived from the following cultural or customary rites or practices that discriminate against or degrade women:

- (i) forced virginity testing; or
- (ii) female genital mutilation; or
- (iii) pledging of women or girls for purposes of appeasing spirits; or
- (iv) forced marriage; or

61 For further good practice examples of definitions of economic abuse refer to Combating of Domestic Violence Act 2003, s2(c) (Namibia); Domestic Violence Act 2007, s1 (Sierra Leone).

62 L Seff, R Beaulaurier, & F Newman, “Nonphysical Abuse: Findings in Domestic Violence Against Older Women Study” (2008) 8(3) Journal of Emotional Abuse 355.

- (v) child marriage; or
- (vi) forced wife inheritance; or
- (vii) Sexual intercourse between fathers-in-law and married daughters-in-law.

2. Anti-Domestic Violence Law 2011 (Kurdistan Region-Iraq)

Article 2. The following are regarded as examples of domestic violence acts.

1. Marriage under duress.
2. Forcing a sister to marry a man in order to marry that man's sister and marriage of minors.
3. Marriage instead of blood money.
4. Divorce under duress.
5. Cutting off Kinship relationship.
6. Forcing a wife into prostitution.
7. Female genital mutilation.
8. Forcing a family member to quit job.
9. Forcing children to work, ask for alms, or drop out of school.
10. Committing suicide due to domestic violence.
11. Abortion due to domestic violence.

Including both patterns and isolated incidents of domestic violence in the legislation

Domestic violence can take the form of a single act of abuse or a pattern of behaviors. The legislation should clearly state that a single incident is enough to be domestic violence and, that seemingly minor or trivial behavior can also be domestic violence given the power dynamics within domestic relationships..

GOOD PRACTICE EXAMPLE

Domestic Violence Act 1995 (New Zealand)

s3 (1)

- (a) A single act may amount to abuse.
- (b) A number of acts that form part of a pattern of behavior may amount to abuse, even though some of those acts when viewed in isolation may appear to be minor or trivial.

3.2 Who should be protected by the Domestic Violence Legislation?

Domestic violence legislation is aimed at the protection of persons who have, or have had, a domestic relationship with the offender. Domestic violence legislation is not intended to protect those who experience violence from a stranger. This is covered by existing criminal law legislation in the form of offences such as assault and battery as well as in broad gender-based violence laws.

Domestic violence can occur between persons in different personal and domestic relationships, including past relationships, where there are power imbalances. It is important anyone who experiences or is at risk of experiencing domestic violence is protected by the legislation. This goes beyond traditional concepts of a nuclear family to include extended family, persons who are cared for by another person, home or domestic help, and intimate relationships even if they do not constitute a legal marriage within specific jurisdictions including customary and same-sex relationships.

Possible Protected Persons

1. Spouse

Spouse can include persons formally married or married according to custom or religion and previously married.

Good Practice Example:

Domestic Violence Act 1998 (*South Africa*)

s1(vii). “Domestic relationship” means a relationship between a complainant and a respondent in any of the following ways: (a) they are or were married to each other, including marriage according to any law, custom or religion.

2. De Facto

De facto can include persons in, or previously in, a “marriage-like” relationship either opposite sex or same-sex.

Good Practice Examples:

2.1. Domestic Violence Act 1998 (*South Africa*)

s1(vii). “domestic relationship” means a relationship between (a) complainant and a respondent in any of the following ways (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other.

2.2. Domestic Violence Act 294 1996 (*Chile*)

s3. The term “permanent partners” applies in equal terms to members of the same sex.

3. Intimate Personal Relationship or Close Personal Relationship

This is a broader category than de facto and can encompass more forms of relationship than de facto, for example, a couple who are dating but not necessarily living together.

Good Practice Examples:

3.1 Domestic and Family Violence Protection Act 1989 (*Queensland, Australia*)

s12A(3). An intimate personal relationship is a relationship ‘based on intimacy, trust and commitment’.

3.2 Domestic Violence (Protection Orders) Act 1997 (*Bermuda*)

s4(4). In determining whether a person has a close personal relationship with another person, the Court must have regard to:

(a) The nature and intensity of the relationship, and in particular:

- I. the amount of time the persons spend together;
- II. the place or places where that time is ordinarily spent
- III. the manner in which that time is ordinarily spent; but it is not necessary for there to be a sexual relationship between the persons:

(b) The duration of the relationship.

4. Family members

An elderly family member may be abused, parents may be abused by their violent child, and children may be abused by a range of family members so it is important to extend the definition of family member beyond the nuclear family and to all persons in “family-like” relationships, particularly in countries where extended family groups are common.

Good Practice Example:

Domestic Violence Bill (draft) (*Marshall Islands*)

53(k). “Family member” means...any other person who is treated by the person as a family member or member of a same household related by consanguinity, affinity or adoption.

5. Care Relationship

Research has found that an unacceptably high proportion of women with disabilities both physical and intellectual, experience abuse from care providers, both in institutionalized and in domestic settings.⁷² Children with disabilities are 4 to 5 times more likely to experience violence and sexual abuse than non-disabled children.⁷³

Good Practice Example:

Domestic and Family Violence Protection Act 1989 (*Queensland, Australia*)

512C(1). Protected person includes a person who is dependent on someone else for help with an activity of daily living required because of ‘disability, illness or impairment’.

6. Someone who is or has been a member of the other person’s household

This category includes boarders, a foster child, or a child who resides or stays with a family friend or other person (temporarily or long-term) or anyone else who resides in a person’s household.

Good Practice Example:

Domestic Violence Act 1998 (*South Africa*)

51(vii)(f). Domestic relationship includes persons who “share or recently shared the same residence.”

7. Domestic worker

Good Practice Example:

Domestic Violence Act 2007 (*Sierra Leone*)

53(1). A domestic relationship...includes a relationship where the complainant: (h) is a house-help in the household of the offender.

63 See D Stubbs & S Tawake, *Pacific Sisters with Disabilities: At the Intersections of Discrimination*, 2009, UNDP Pacific Center at 18. Carolyn Frohmader, *There’s No Justice - There’s Just Us: The Status of Women with Disabilities in Australia* (2002) 22; Laurie Powers et al, ‘Barriers and Strategies in Addressing Abuse: A Survey of Disabled Women’s Experiences. PAS Abuse Survey’ (2002) 68 (1) *Journal of Rehabilitation* 10; Anne Lawrence and Sally Robinson, “Access to Injustice? Domestic Violence and Women with Intellectual Disabilities in Australia” 8(1) *Polemic* 34.
64 WHO Europe, *Protection from Harm and Abuse. Briefing Paper*, 2010, EUR/51298/17/PP/1; P Sullivan & J Knutson *Maltreatment and Disabilities: A Population-Based Epidemiological Study* (2000) 24(10) *Child Abuse & Neglect* 1257.

3.3 Protection Order

What is a protection order?

Protection orders (also known as restraining orders or non-molestation orders) are issued by a court, the police or other authorized person to prevent an offender from making contact, harming or harassing another person. The CEDAW Committee has stated that the availability of protection orders is an “essential component of a comprehensive legal framework designed to protect women in situations of domestic or sexual violence” and that a failure to provide for protection orders “amounts to discrimination under Article 1 of the Convention.”⁷⁴

The availability of protection orders is an essential component of a comprehensive legal framework designed to protect women in situations of domestic or sexual violence (CEDAW Committee)

What is an emergency protection order?

An emergency protection order (also called an interim, temporary or safety order) is a type of protection order that is immediately and easily available often without requiring the victim to go to court. Domestic violence often occurs at night and on weekends when courts are closed, or in rural or remote areas where there are no courts. An emergency protection order should be accessible 24 hours a day, 7 days a week, accessible over the phone (where there is telephone service), or by shortwave radio and available ex parte (which means without the testimony of the offender or need to inform the offender of the application for an emergency protection order). Typically an emergency protection order is issued for a short period of time pending a court hearing for a standard (or final) protection order. An emergency protection order should not expire before the hearing. In some countries (for example, New Zealand) an emergency order becomes a final order automatically unless the offender requests a hearing.⁷⁵

What is an occupation order?

An occupation order (also known as exclusion orders in some jurisdictions) is one type of protection order. It lets the victim remain in a home that she or he shares with the offender and it excludes the offender from living there or entering the home regardless of who owns the home. Studies have found that domestic violence victims are severely economically, educationally and socially disadvantaged if they are forced to leave their homes and that there is a high risk they will become homeless or, with no other options, return to the abusive environment.⁷⁶ Occupation orders are usually also available during separation and divorce even if there is no domestic violence. A good practice approach to an occupation order in domestic violence legislation is to include a provision that directs the court to presume that it is in the best interests of the victim and their children to stay in their home.

Who can apply for a protection order?

All protection orders should be easily accessible to anyone at risk of domestic violence. The following persons should have legal authority to apply for a protection order; any person at risk of domestic violence including children who understand the nature and the consequences of the proceedings, a parent of a child that is at risk of domestic violence, any person with a residence order in relation to a child at risk of domestic violence, or any person if a child is in immediate danger. In some circumstances it may be difficult for a person to apply for a protection order and therefore a good practice approach is to enable applications to be made by “any other person on behalf of the aggrieved person”.⁷⁷

⁶⁵ See the CEDAW Committee's Views, A.T v Hungary Communication No 2 (2003) 32nd Session where the Committee censured Hungary for not having provision in the law for restraining orders and stated this was in non-compliance with CEDAW.

⁶⁶ See Domestic Violence Act 1995, s 77(1), (New Zealand) <http://www.legislation.govt.nz/act/public/1995/0086/latest/DLM371926.html>

⁶⁷ Domestic Violence and Incest Resource Centre, Family Violence and Homelessness: Removing the Perpetrator from the Home, Discussion Paper No 2 (2002) 6. R Edwards, Staying Home Leaving Violence: Promoting Choices for Women Leaving Abusive Partners (2004) 36.

⁶⁸ See for example Domestic Violence Act 2005, Cap 16, s 12.

Some jurisdictions allow applications to be made without the consent of the victim (for example by police officers or a person appointed by the court). This is justified on the basis that the threatening presence of the offender may prevent a victim from considering her options. This may be controversial because it takes away from the victim the decision about whether or not to apply for an order.⁷⁸

A midway approach is illustrated in the example of Namibia below which allows others to apply for an order without the consent of the victim but only if the victim is a minor, mentally incapacitated, unconscious, regularly under the influence of alcohol or drugs or at risk of serious physical harm.

GOOD PRACTICE EXAMPLE

Combating of Domestic Violence Act 2003 (Namibia)

s2 (1). An application may be brought on behalf of a complainant by any other person who has an interest in the well-being of the complainant, including but not limited to a family member, a police officer, a social worker, a health care provider, a teacher, traditional leader, religious leader or an employer.

(2) An application made under subsection (1) must be made with the written consent of the complainant, except in circumstances where the complainant is

- (a)** A minor;
- (b)** Mentally incapacitated;
- (c)** Unconscious;
- (d)** Regularly under the influence of alcohol or drugs; or
- (e)** At risk of serious physical harm,

But, in the case of paragraph (d) or (e), the court must approve the making of the application.

Who can make a protection order?

Usually a particular court or courts in general can issue all forms of protection orders. In order to make orders accessible, some jurisdictions also allow other authorities (such as police officers or designated community persons) to issue orders.

Vanuatu, for example, provides for nominated authorized persons to make temporary protection orders. Persons who can be nominated include a principal chief, an assistant chief, a church leader, a community leader, a teacher, and a village health worker, a police officer at the rank of inspector or above, and anyone else who has applied for and received authorization from the President.⁷⁹

While some categories of persons such as chiefs, church leaders, and community leaders have the potential to or may have previously perpetuated traditional hierarchies that have not protected victims (or that have generally discriminated against women), each person that is nominated to become a person authorized to issue a protection order must undergo training, have knowledge of the legislation, and have an understanding of the social and cultural environment within which domestic violence takes place.⁸⁰

The authorization of police officers or other authority figures to issue orders must be approached with care in countries where there is potential for corruption or where state power is exerted through the police or others without proper checks and balances.

What should the criteria be for making a protection order?

Protection orders should be available in all situations where there is a risk of domestic violence. Three approaches to the criteria for the issuance of protection orders have been adopted in domestic violence legislation as illustrated in the table below. The approach which is adopted in the majority of countries is to allow for orders only **after** an act of domestic violence has occurred. A stronger approach is to require that an act of

69 C O'Connor, "No-Contact Orders and the Autonomy Rights of Victims (1998-1999) 40 British Columbia Law Review 937.

70 Family Protection Act 2008, s7 (Vanuatu).

71 Family Protection Act 2008, s7(2) (Vanuatu).

domestic violence is **likely** to occur while the strongest approach is to require that a victim has a **reasonable fear** that an act of domestic violence will occur.

Approaches

1. Require that there are reasonable grounds for a person to fear an act of domestic violence will occur

Good Practice Example:

Domestic Violence Act 1994 (*South Australia*)

s On a complaint under this Act, the Court may make a domestic violence restraining order against the defendant if: (a) there is a reasonable apprehension that the defendant may, unless restrained, commit domestic violence.

2. Require that an act of domestic violence is “likely” to occur

Good Practice Example:

Family Protection Act (draft) (*Papua New Guinea*)

59(1) The court may make a protection order against a defendant if the court believes on reasonable grounds **(b)** the defendant is likely to commit an act of domestic violence against the complainant.

3. Require an act of domestic violence has taken place

Good Practice Example:

A Decree on the Proclamation of the Law on Protection from Domestic Violence 2005 (*Federation of Bosnia and Herzegovina*)

Article 12. The court may issue a restraining order if a person has committed an act of domestic violence and it is likely they will commit another act of domestic violence.

What should the criteria be for making an occupation order?

An occupation order should be available in situations of domestic violence on the basis of criteria that focus on the safety and protection of the victim and any children who live in the home. Such factors should include:

- the impact on the safety and protection of the victim and any children who live at the home (even if the children are not victims) if an occupation order is not made;
- the desire to minimize disrupting the victim and any children living with the victim and the importance of maintaining their social networks and support;
- ensuring continuity of care for children who live with a victim;
- ensuring continuity in childcare, education, training and employment for victims and children who live with them;
- the accommodation needs of the victim, any children and the offender; and
- the welfare and best interests of the children of the offender and/or the victim.

What should the conditions of a protection order be?

The conditions of a protection order are critical to its effectiveness. A good practice adopted by a number of countries imposes mandatory

conditions for every protection order. Under this model, the judge (or the person authorized to make the order) is given discretion to attach extra conditions based on the circumstances of each individual case. Mandatory conditions should correspond to the definition of an act of domestic violence included in the legislation. For example, in New Zealand, the definition of domestic violence includes physical, sexual, economic and psychological abuse and accordingly every protection order must prohibit the offender from perpetrating all of these forms of abuse.⁸¹ Additionally, a protection order should prohibit the possession of firearms or any other weapon during the duration of the protection order and direct the offender to relinquish any firearm or other weapon that he has in his possession to police.⁸²

What should the conditions of an occupation order be?

As illustrated in the examples below, occupation orders regulate who can live in the family home, and can also restrict the offender from entering the surrounding area. Conditions that can be included in an occupation order to make it safer for the victim include:

- giving the victim exclusive possession of the home; if she lives with his family and it is not possible to completely exclude the offender, then exclude him from certain parts of the house;
- directing the police to escort the offender to the home to retrieve his personal belonging;
- prohibiting the offender from removing essential items from the home (for example, removing all the food or furniture from the home);
- directing the offender to pay the rent or the mortgage or a portion of the rent or mortgage.

Conditions of Occupation Orders

1. Exclusive right to all or part of residence

Good Practice Example:

Domestic Violence Bill (draft) (Marshall Islands)

s8(3)(c). A court may include all or any of the following specific conditions in a protection order (3)(c) granting the complainant exclusive occupancy to a residence or specified part of a residence whether or not the residence is solely owned or leased by the respondent.

2. Prohibit offender from removing movable property from residence

Good Practice Example:

Family Violence Protection of Victims Act 2000 (Seychelles)

s4(2) Without limiting the effect of subsection (1), a protection order may (g) prohibit the respondent from taking possession of movable property, including furniture and household effects, used by a family member.

3. Permit the protected person to have continued use of family vehicle

Good Practice Example:

Domestic Violence Act 1994 (Malaysia)

s6(1). A protection order issued under section 5 may, where the court is satisfied on a balance of probabilities that it is necessary for the protection and personal safety of the complainant or the child or the incapacitated adult, as the case may be, provide for anyone or more of the following orders: (e) requiring the person against whom the order is made to permit any protected person

⁷² Domestic Violence Act 1995 (New Zealand), s19.

⁷³ See for example Domestic Violence Act 1995 (New Zealand), s21; Domestic Violence Act 1998 (South Africa), s 9(1).

to have the' continued use of a vehicle which has previously been ordinarily used by the protected person or persons.

4. Direct the offender to pay rent or mortgage

Good Practice Example:

Domestic Violence Act 2007 (*Sierra Leone*)

s15(2). A protection order may, at the request of the applicant or on the court's own motion, include any or all of the following: court's own motion, include any or all of the following:

- (a) a provision which (iii) directs the respondent to relocate and continue to pay any rent, mortgage payment and maintenance to the applicant.

5. Direct the police to remove the offender from the residence

Good Practice Example:

Combating of Domestic Violence Act 2003 (*Namibia*)

s14(2). A protection order may, at the request of the applicant or on the court's own motion, include any of the following provisions - (ii) a provision directing a police officer to remove the respondent from the residence.

6. Enable the offender to collect personal belongings from the residence under police supervision

Good Practice Example:

Combating of Domestic Violence Act 2003 (*Namibia*)

s14(2). A protection order may, at the request of the applicant or on the court's own motion, include any of the following provisions - (ii) a provision directing a police officer to remove the respondent from the residence.

How should protection orders be enforced?

Strong enforcement mechanisms are critical to ensuring all forms of protection orders are effective. If the police and the courts do not respond adequately to breaches of orders, both victims and offenders will consider them ineffective. This may give victims a false sense of safety and security and give offenders a sense of impunity. The approaches that have been adopted for the enforcement of orders in domestic violence legislation globally include:

- criminal fines;
- Imprisonment;
- community service;
- monetary bonds;
- mandatory rehabilitation for offenders; and
- counseling for offenders.

Imprisonment and/or fines

The most common approach to enforcement is criminal penalties such as imprisonment or fines, known as a punitive approach. The reason for a strong punitive approach is that in order to be an effective deterrent a breach of a protection order must result in a criminal offence with a

serious penalty.⁸³

Some jurisdictions have harsher penalties for second offences.⁸⁴ Although imprisonment and fines may be problematic in small subsistence communities and for poor victims if it results in less financial support available to the victim and any children it is important that breaches of protection orders are seriously regarded.

Community work

Another alternate model of criminal penalty is community work. In Ecuador for example, if the offender lacks the financial resources to pay the requisite fine, the offender is required to do community work for a minimum period of one to two months, in a schedule that does not alter their paid work.⁸⁵ This is an approach that punishes the offender without disadvantaging the victim financially.

Bond

Another alternative is to require a monetary bond from the offender. This approach provides a financial incentive to the offender to comply with the protection order. For example, in the Philippines the court may order “any person against whom a protection order is issued to give a bond to keep the peace, and /or to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented.”⁸⁶

Rehabilitation

Rehabilitation should be primarily used to complement other punitive means of enforcement to ensure that breaches of protection orders are seriously regarded. Approaches focusing on the rehabilitation of the offender are not common. However, a review of 22 studies in 2004 on rehabilitative programs for domestic violence offenders found a 5% to 15% reduction in violence between those who took part in rehabilitation and those who did not.⁸⁷ The authors argue that even though this appears a modest effect, “DV treatment in all reported cases of domestic violence in the United States in 1996 (840,000) would equate to approximately 42,000 women per year no longer being battered”.

Countries that have adopted rehabilitation include New Zealand where a magistrate making a protection order must direct the abuser to attend a rehabilitation program;⁸⁸ Moldova where the court may order the offender to participate in a special treatment or counseling program,⁸⁹ Colombia where the court may order the offender “to attend counseling and therapy in a public or private institution at the offender’s expense,”⁹⁰ and Timor-Leste where imprisonment can be avoided if the offender attends a rehabilitation program.⁹¹

However, the utility of this option rests on the availability of effective rehabilitation programs. In the Philippines to ensure that programs are available a corresponding duty is placed on the state to “provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways.”⁹²

3.4 Domestic Violence Offences

Why are targeted criminal domestic violence offences important?

Domestic violence offences are an important component of domestic violence legislation for a range of reasons. First, the criminalization of domestic violence marks society’s condemnation of domestic violence as unacceptable and criminal behavior. Second, domestic violence offences can improve police accountability for the protection of women counteracting a historical failure by police to treat domestic violence as seriously as stranger violence. Third, existing criminal offences such as assault and battery do not adequately address the complexity and continuous nature of domestic violence.

⁷⁴ UK Government White Paper, Justice: the Government’s Proposals on Domestic Violence (Jun 2003, Cm 5847).

⁷⁵ See for example Domestic Violence Act 1999, s20 (Trinidad and Tobago); Domestic Violence Act 2007, s23 (Belize); Domestic Violence Act 1994, s8 (Malaysia); Protection from Domestic Violence Act 1997, s13 (Mauritius).

⁷⁶ Law Against Violence Against Women and Family 1995, Article 22. (Ecuador).

⁷⁷ Anti-Violence Against Women and Their Children Act 2004 (The Philippines).

⁷⁸ J Babcock, C Green & C Robie, “Does Batterers’ Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment” (2004) 23 Clinical Psychology Review 1023.

⁷⁹ Domestic Violence Act 1995 (NZ), s32.

⁸⁰ Law on Preventing and Combating Family Violence 2007, Article 15 (Moldova).

⁸¹ Law 1257 of 2008, Article 5 (d) (Colombia).

⁸² Law Against Domestic Violence 2010, Article 38 (Timor Leste).

⁸³ Anti-Violence Against Women and Their Children Act 2004, s 41 (The Philippines).

What harms should domestic violence offences include?

Domestic violence offences should criminalize the full range of domestic violence harms including physical abuse, sexual abuse, intimidation, harassment, stalking, economic deprivation, property damage, psychological and emotional abuse, allowing a child to witness domestic violence and threats of any of the above. Domestic violence offences can be contained in stand-alone domestic violence legislation, incorporated into an existing penal code, included in a broad gender based violence law or criminalized in targeted laws which focus on a particular type of harm.

UNDP Support for the Development of Criminal Domestic Violence Offences

UNDP in ALBANIA

The Albanian Law on Measures for Prevention of Violence In Family Relations does not contain criminal offences for domestic violence. UNDP Albania engaged five local lawyers and one international lawyer to conduct a general gender analysis of Albanian legislation. As part of this review the lawyers examined criminal provisions, and developed draft amendments together with explanatory notes including recommendations for adding criminal domestic violence offences. UNDP Albania liaised with relevant

Ministries NGOs, diplomatic corps and international organizations working on human rights, social inclusion issues and justice reform programs, and supportive women MPs to successfully advocate for the amendments. With UNDP support two series of amendments to the Criminal Code were adopted in the spring of 2012 and of 2013. Pursuant to these amendments, marital rape and domestic violence are now specifically criminalized, stalking is introduced for the first time in Albanian criminal legislation, and sanctions against gender-based violence were significantly harshened.

UNDP in PAKISTAN

Acid crimes, where offenders burn victims by throwing acid at them, are a form of domestic violence in some South East Asian countries. UNDP supported an advocacy campaign in Pakistan for acid crime control and prevention which resulted in the passing in 2011 of the Acid Control and Acid Crime Prevention Amendment to the Pakistan Penal Code creating criminal offences for acid crimes.

What penalties should be imposed?

Imprisonment is the most common penalty for domestic violence offences. The length of the sentence typically ranges from 1-2 two years. However some countries have more serious penalties such as Vanuatu where the penalty for the criminal offence of domestic violence is a term of imprisonment not exceeding five years or a fine not exceeding 100,000 Vatu or both,⁹³ the Czech Republic where the penalty is 8 years imprisonment if the domestic violence was conducted in an “especially cruel manner”,⁹⁴ Zimbabwe where the penalty is up to ten years imprisonment,⁹⁵ and the Philippines where the penalty is up to 12 years imprisonment if there are “serious physical injuries”.⁹⁶ These are severe penalties recognizing the seriousness of the offences.

Domestic violence legislation generally uses one of two approaches to penalties. The first is to have a single offence and the penalty is directly linked to the definition of domestic violence. In this approach the judge has the discretion to determine the appropriate sentence in accordance with the range of penalties included in the legislation.⁹⁷ A second approach does not leave the penalty to the judge’s discretion. Instead, a

⁸⁴ Family Protection Act 2008, s10(1) (Vanuatu).

⁸⁵ Protection Against Domestic Violence (No 135) 2006, s215a (Czech Republic).

⁸⁶ Domestic Violence Act 2007, s4 (Zimbabwe).

⁸⁷ Anti-Violence Against Women and Their Children Act 2004, s6 (The Philippines).

⁹⁷ It is important that the capacity building of all judicial actors is conducted alongside the implementation of domestic violence legislation to ensure understanding of the issues and the new legislation.

hierarchy of domestic violence offences is created so that some forms of domestic violence are treated as more serious than others. Specific penalties are then provided for each of the different forms of domestic violence. This usually involves categorizing different forms of physical abuse and sexual abuse as more serious than non-physical forms of abuse. The two approaches to penalties in domestic violence offences are illustrated in the table below.

Approaches to Penalties

1. A single domestic violence offence for all forms of domestic violence. The judge has the discretion to determine the penalty

Good Practice Example:

Family Protection Act 2013 (*Papua New Guinea*)

57(1). A person who commits an act of domestic violence is guilty of an offence.

Penalty: A term of imprisonment not exceeding five years or a fine not exceeding K5,000 or both.

2. Create a hierarchy of domestic violence offences whereby some types of domestic violence are treated more seriously than others

Good Practice Examples:

Example 1 illustrates this approach in a stand-alone domestic violence law.

Law of the Republic of Indonesia No 23 of 2004 Regarding the Elimination of Violence in Household with the Mercy of God Almighty the President of the Republic of Indonesia (*Indonesia*)

Article 44 (1). Anyone committing an act of physical violence in a household shall be punished with imprisonment of not longer than five years imprisonment or a fine of not more than Rp15, 000,000.

(2). In the case that the act referred to in (1) causes the victim to sustain serious injury, the perpetrator shall be punished with imprisonment of not longer than 10 years imprisonment or a fine of not more than Rp30,000,000.

(3). In the case that the act referred to in (1) brings about the death of the victim, the perpetrator shall be punished with imprisonment of not longer than 15 years or a fine of not more than Rp45,000,000

Article 45 (1). Anyone committing an act of psychological violence in a household shall be punished with imprisonment of not longer than 3 years imprisonment or a fine of not more than Rp 9,000,000.

Example 2 illustrates this approach in a broad gender based violence law.

In the Name of Allah the most Compassionate the Most Merciful Law on the Elimination of Violence Against Women 2009 (*Afghanistan*)

Article 20 (1). If a person burns a woman or sprays chemicals or other poisonous substances on her body causing injury, or makes her eat a poisonous substance or injects it into her body, the offender shall depending on the circumstances be sentenced to imprisonment not exceeding ten years.

Article 33. A person who prevents a woman from her inheritance must restore her legal share and sentenced to imprisonment of not more than one month.

Example 3 illustrates this approach in a law targeted at a specific harm (female circumcision).

Female Circumcision Abolition Proclamation No 158/2007 (Eritrea)

Article 3. Female circumcision is hereby abolished.

Article 4(1). Whosoever performs female circumcision shall be punishable with imprisonment of two to three years and a fine of five to ten thousand (5,000.00 to 10,000.00) Nakfa. If female circumcision causes death, imprisonment shall be from five to ten years.

(2). Whosoever requests, incites or promotes female circumcision by providing tools or by any other means shall be punishable with imprisonment of six months to one year and a fine of three thousand (3,000.00) Nakfa.

(3). Where the person who performs female circumcision is a member of the medical profession the penalty shall be aggravated and the court may suspend such an offender from practicing his/her profession for a maximum period of two years.

3.5 Compensation

Compensation is payment for damage and loss resulting from an injury. The payment of compensation to victims of domestic violence can assist victims in their recovery from the medical, psychological, cultural, vocational and relational consequences of domestic violence. It can provide some economic freedom and independence for the victim⁹⁸ including the means to access counseling and other rehabilitative services and the opportunity to secure safe housing options.⁹⁹

In General Recommendation 19(24)(i), the CEDAW Committee states that remedies including compensation should be provided for victims of gender based violence. In its views to a recent Communication under the Optional Protocol¹⁰⁰ the CEDAW Committee further stated that “effective and sufficient” remedies should be provided to victims of gender-based violence and that compensation “should be proportionate to the physical harm undergone and to the gravity of the violation of her rights.”¹⁰¹ Good practice compensation payments include:

- compensation for physical or mental harm such as pain, suffering and emotional distress,
- compensation for lost opportunities, including education, loss of earnings and loss of earning potential;
- compensation for harm to reputation or dignity;
- compensation for the costs required for legal advice, medicines and medical services, counseling and social services.

There are two approaches to the payment of compensation that have been used in domestic violence legislation as illustrated in the table below. The first is to include in the legislation a state funded compensation scheme as in the example of Zambia below. In the second approach the court orders the offender to pay compensation to the victim, as in the example of Belize below.

Approaches

1. Include a state funded support fund in the legislation.

Provided there are state resources to fund and administer such a scheme this is the strongest approach to compensating victims as they do not have to rely on the resources of the offender.

Good Practice Example:

Anti Gender-Based Violence Act 2011 (Zambia)

⁸⁸ See J Conaghan, “Tort Litigation in the Context of Intra-familial Abuse” (1998) 61 Modern Law Review 132.

⁸⁹ See I Freckelton, “Compensating the Sexually Abused” in P Eastaugh (ed) *Balancing the Scales: Rape, Law Reform and Australian Culture* (Sydney: Federation Press, 1998) 191 at 196.

⁹⁰ The Optional Protocol establishes a complaints process through which individuals can complain about violations of rights under CEDAW and an inquiry process through which the CEDAW Committee can conduct inquiries into serious and systematic abuses of women's human rights in countries that are States parties to the Protocol.

⁹¹ See *A.T v Hungary* at para 9.6 I(b) and para 9.6 II(g).

32(1). There is hereby established the Anti-Gender-Based Violence Fund.

(2) The Fund shall consist of:

- (a)** voluntary contributions to the Fund from any person;
- (b)** such money as Parliament may approve for purposes of the Fund; and
- (c)** any grants from any source within or outside Zambia with approval of the Minister.

(3) The monies of the Fund shall be applied for:

- (a)** the basic material support of victims; and
- (b)** any other matter connected with the counseling and rehabilitation of victims in their best interest.

2. Compensation payable by the offender

Good Practice Example:

Domestic Violence Act 2007 (Belize)

55(c)(1). The court may direct that the respondent pay compensation for monetary loss incurred by the applicant as a direct result of conduct that amounted to domestic violence.

57(1). Such financial compensation shall include, but shall not be limited to:

- (a)** loss of earnings;
- (b)** medical and dental expenses;
- (c)** relocation and moving expenses;
- (d)** accommodation expenses; and
- (e)** reasonable legal costs including the cost of an application under this Act.

(2) The payment of financial compensation shall be received by the Clerk on behalf of the applicant.

3.6 Mandatory Reporting of Domestic Violence

What is mandatory reporting?

Mandatory reporting is when specific people identified in the legislation have a legal duty to report suspected domestic violence to the police or a responsible Ministry. A duty can be placed on persons with responsible positions in the community such as medical and health practitioners, welfare workers, religious leaders and teachers who suspect domestic violence in the course of their professional responsibilities. For example, the Cook Island's draft Family Law Bill places a duty to report on a "police officer, a teacher at a school, a religious leader or a doctor"⁹² and in Ecuador a duty to report is placed on the police, the Public Prosecutor and "health professionals belonging to hospitals or nurses".⁹³ A duty can also be much broader as in Bosnia where the duty is extended to "a family member or any individual".⁹⁴

There are however a range of arguments for and against the inclusion of mandatory reporting in domestic violence legislation and each individual country should weigh up the advantages and disadvantages in their own particular domestic context.

Arguments for mandatory reporting	Arguments against mandatory reporting
Ensures that all protective resources and legal remedies are available to victims.	Victims may be deterred from seeking assistance such as medical treatment because of fears that mandatory reporting will lead to payback or retribution from offenders.

⁹² Draft Family Law Bill, s63(2) (Cook Islands).

⁹³ Law on Violence Against Women and the Family 2004, Article 10 (Ecuador).

⁹⁴ Protection on Protection Against Domestic Violence 2005, Article 7 (Federation of Bosnia and Herzegovina).

Promotes early identification of vulnerable adults and children.	Victims may lie about the cause of their injuries to avoid detection.
Provides adult victims and their children with important information about domestic violence, safety planning, legal and community service options.	Offenders may prevent victims from attending health and other services to avoid being reported.
Assists in holding offenders accountable.	Health professionals, teachers and others will not inquire about the cause of injuries because they do not wish to be required to report.
Improves domestic violence data collection and documentation.	Involves the breach of professional, personal and familial confidences and trust. ¹⁰⁵

3.7 State Duties

Why place duties on the state?

The structural and widespread nature of domestic violence means it is unlikely to be ended through the actions of individuals.¹⁰⁶ State action, in contrast to individual action, has the capacity to be systematized, country-wide and properly resourced. Further, states have an obligation under international law to end domestic violence as discussed previously. An important innovation in domestic violence legislation therefore has been the placement of positive duties on the state.

Positive state duties in domestic violence legislation fall into three broad categories, first, a duty to provide services to ensure the safety, security and rehabilitation of victims of domestic violence, second, a duty to provide information to victims, to deliver education and awareness-raising programmes to modify and change behaviour and attitudes and, third, a duty to compile statistics and to conduct research on the extent, causes and effects of domestic violence and to disseminate the results. Good practice components of the three categories of duties on the state can include:¹⁰⁷

1. Identifying what action must be taken by the state with the inclusion of direct and specific responsibilities,
2. Identifying who must take the action by placing the duty on an specific state body or department,
3. Guaranteeing adequate funds from a designated source to enable the implementation of the duty,
4. Establishing a monitoring mechanism such as a reporting process to ensure the duties are implemented as intended.

⁹⁵ L Lavicoli, "Mandatory Reporting of Domestic Violence: The Law, Friend or Foe?" (2005) 72(4) Mount Sinai Journal of Medicine 228.

⁹⁷ S Fredman, *Discrimination Law* (Oxford University Press: Oxford, 2001) at 164.

⁹⁸ Gender based violence laws in the Latin American region are particularly notable for the expansive duties they place on the state. See for example Law Against Violence Against Women 2012 (Nicaragua); General Law on Access of Women to a Life Free of Violence 2007 (Mexico) & Organic Law on the Right of Women to a Life Free of Violence 2006 (Venezuela).

State duty to provide victim services

Services are critical to helping victims rebuild their lives following domestic violence. Essential services include health, police and legal services, shelters, hotlines, counseling and rehabilitation. Specific services for victims are delivered by the state and also often by non-state actors such as religious groups or non-government organizations. In some contexts, the state may be better placed to ensure the provision of comprehensive quality services as they have the option of prioritizing additional resources for victim services, have access to technical expertise and should be ensuring that services are available country-wide and on a non-discriminatory basis.

However, regardless of whether the state directly provides services or whether services are provided by other organizations it is the responsibility of the state to ensure that services are delivered in accordance with norms and standards and are of the necessary quality. The legislation should therefore set standards to ensure services offer professional, capable and compassionate assistance and are flexible in meeting the diverse needs of their clients, including indigenous persons, older persons, persons with disabilities, persons in same-sex relationships, and persons from culturally and linguistically diverse backgrounds. Good practice examples are provided in the table below.

Victim Services

1. To provide shelters

In an excellent global example Zambia places a duty on the Minister of Social Welfare to establish shelters, set standards and norms for shelters and establishes a system of inspectors to ensure those standards are met.

Good Practice Example:

Anti Gender-Based Violence Act (Zambia)

s24. The Minister responsible for Social Welfare shall:

- (a) from money appropriated by Parliament for that purpose, establish and operate shelters for victims; and
- (b) ensure an appropriate spread of such shelters throughout Zambia.

s25. A shelter for victims shall comply with the norms and standards as the Minister may, by statutory instrument, prescribe.

2. To provide long term housing for victims

In an excellent global example El Salvador recognizes the long term housing needs of victims of domestic violence.

Good Practice Example:

Special Law for a Life Free of Violence for Women (El Salvador)

Article 40. The Ministry of Public Works must prepare a housing policy that progressively provides housing for women facing violence especially older women and women with disabilities.

3. To provide free legal services

Good Practice Example:

General Law on Women's Access to a Life Free of Violence 2007 (Mexico)

Article 8(1). The state must provide legal advice free of charge to victims of family violence.

4. To provide medical services

Nicaragua recognizes the particular health needs of domestic violence victims. The duty could be strengthened by providing services free of charge.

Good Practice Example:

Law Against Violence Against Women 2012 (Nicaragua)

Article 20(c). The state must provide comprehensive health services for women, particularly for the harms caused by domestic violence.

5. To set up an emergency 'hotline'

Good Practice Example:

Law Against Domestic Violence 2010 (Timor-Leste)

Article 20(1). An emergency assistance service shall be established to assist victims of domestic violence with the objective of informing them of the steps that may be taken to address their situation.

(2). The Emergency Assistance Service shall provide an emergency telephone hotline which shall be anonymous in nature for a period of time and under conditions to be set by ministerial order.

6. To develop measures and formulate plans for crisis or post crisis situations

El Salvador recognizes the particular vulnerability of women and girls to domestic violence during crisis and post crisis situations. The National Civil Protection plan must include provision for separate physical spaces for men and women during an emergency recognizing that women may otherwise be unprotected in an evacuation centre and establishing procedures to ensure that women have access to food, water, medical supplies and other resources during emergency situations recognizing the burden that women bear during a crisis and their need to access necessary resources.

Good Practice Example:

Special Law for a Life Free of Violence for Women 201 (El Salvador)

Article 22(b). The National Commission for Civil Protection, Disaster Prevention and Mitigation must ensure that actions and preventative measures in relation to violence against women are incorporated into the National Civil Protection Plan to respond to situations of risk and disaster including:

1. The provision of separate spaces for men and women to prevent situations of violence.
2. The provision of specialized health, medical and psychological services to address women's specific needs.
3. The exclusion of men with a history of violent behavior and harassment against women.
4. The establishment of administrative procedures to ensure women receive resources that equate to their responsibilities.

State duty to educate and train

The state is well placed to run public awareness campaigns in the media so the general public can understand the need for the legislation and the issues surrounding domestic violence, to ensure that appropriate information is available to victims on their rights, to integrate appropriate information on domestic violence, its impact, and the content of the law into all educational institutions, and to facilitate and set standards for training police, judges, health-service providers and other persons who provide services to domestic violence victims.

Education and Awareness Raising

1. To train police

The positive duty illustrated in the examples of Argentina and Albania would be strengthened by a detailed framework specifying what must be contained in the training, the qualifications of the persons conducting the training, a timeline for training and a monitoring mechanism to ensure the Ministry fulfils its duty.

Good Practice Examples:

Domestic Violence Act 1998 (Argentina)

Article 11. 5.2. The Ministry of Security must (d) sensitize and train police and security forces on the issue of violence against women in the context of respect for human rights.

On Measures against Violence in Family Relations 2006 (Albania)

Article 7. The Ministry of the Interior has the following duties.

- (a) To set up special units at the police department to prevent and combat domestic violence.
- (b) To train members of the police force to handle domestic violence cases.

2. To raise awareness amongst religious authorities

The important role of religious leaders in disseminating information and changing attitudes in relation to domestic violence is recognized in this good practice example from Afghanistan.

Good Practice Example:

Law on Elimination of Violence Against Women 2009 (Afghanistan)

Article 9. In order to prevent gender based violence the Ministry of Hajj and Pilgrimage shall adopt the following protective measures:

- 1. Conduct seminars, workshops and conferences for Preachers, orators and Mullahs
- 2. Explain and describe the factors causing gender based violence and its harmful consequences based on the provisions of Islamic share and law through related publications.

3. To train judicial actors

Good Practice Example:

Act on the Prevention, Punishment and Eradication of Domestic Violence 1996 (Guatemala)

Article 12. The State shall establish processes, through the Human Rights Ombudsman, for coordinating the delivery of workshops, courses, seminars and conferences to judges, court support staff, Attorney General, prosecutors, medical examiners offices, receiving complaints, the National Police, Ministry of Public Health and other institutions to educate them about interfamily violence, its severity and consequences.

4. To use media to raise awareness, educate and challenge stereotypes

Good Practice Example:

Domestic Violence Protection and Control 2007 (Vietnam)

Article 40. The Ministry of Information and Communication shall instruct the media and press agencies to publish and popularize information on domestic violence and the Law on Domestic Violence Protection and Control.

5. To ensure the curricula of all educational institutions includes information on domestic violence, its impact, and the content of the law

Good Practice Example:

Domestic Violence Protection and Control 2007 (Vietnam)

Article 39. The Ministry of Education and Training shall ensure that all information on domestic violence prevention shall be integrated into all academic curricula appropriate to the discipline and educational level.

State duty to collect and analyze domestic violence statistics

The systematic ethical collection and analysis of statistical data relating to domestic violence is necessary in order to understand prevalence rates, to identify trends, gaps and shortcoming with regards to state response, to enable the development and revision of domestic violence legislation and to facilitate the effective implementation of domestic violence legislation through policy and program development.¹⁰⁸

The state is well placed to undertake comprehensive, mandatory and systemic data collection and analysis. A legislative duty to conduct data collection and analysis can contribute to establishing a systematic process and a number of countries do place duties on the state to collect and analyze statistical data in their domestic violence legislation. The Marshall Islands requires the Ministry of Internal Affairs to collect and maintain data on domestic violence cases,¹⁰⁹ Moldova obligates a range of Ministries to “establish procedures for identifying, recording and reporting cases of family violence according to gender statistic criteria,”¹¹⁰ South Korea requires the Minister of Gender Equality and Family to survey every three years the “actual conditions” of domestic violence and announce the results of the survey and develop policies in response.¹¹¹

A duty to collect and analyze data on domestic violence should include the following good practice components:

1. Ensuring data and statistics are gathered by a range of institutions including through the national census and by the police, the courts, and service providers including hospitals, health centers, counseling services, and shelters.
2. Ensuring the information gathered is comprehensive and captures the complexity, variety and depth of domestic violence including:
 - type and method of violence - whether physical, sexual, emotional or economic;
 - extent of violence, for example, whether it is a repeat victimization;
 - relationship between the victim and the offender, for example, spouse, ex-spouse, dating partner, other relative, acquaintance or caregiver;
 - impact of violence, for example, the type of injury and the direct and indirect costs of the domestic violence;
 - whether a protection order was applied for and made, and if so how long for;

⁹⁹ The CEDAW Committee has consistently emphasized the need to collect statistics on the causes, scope and extent of all forms of violence against women. UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations of the Committee on the Elimination of Discrimination against Women - South Africa, 16 December 2011, CEDAW/C/ZAF/CO/4 at para [26], available at: <http://www.unhcr.org/refworld/docid/4eeb5fbc.html>; UN Statistical Commission, Report on the Meeting of the Friends of the Chair of the United Nations Statistical Commission on Statistical Indicators on Violence against Women, 2010 (ESA/STAT/AC.193/L.3). See also the interim indicators on violence against women developed by the UN Statistical Commission Report on the Meeting of the Friends of the Chair of the United Nations Statistical Commission on Statistical Indicators on Violence against Women of February 2010 (ESA/STAT/AC.193/L.3)

¹⁰⁰ Domestic Violence Prevention and Protection Bill, s24 (draft) (Marshall Islands).

¹⁰¹ Law on Preventing and Combating Family Violence, Article 8, s 1(c) (Moldova).

¹⁰² Act on the Prevention of Domestic Violence and Protection of Victims 1997, Article 4-2 (South Korea).

- whether criminal prosecution was pursued or charges dropped, whether the offender was convicted and if so what penalty was awarded;
 - whether compensation was sought, awarded and if so the amount awarded;
 - how many referrals have been made to shelters or other services for victims by the police;
 - what training has been undertaken by professionals, such as the police, health care workers and social workers on domestic violence;
 - what victim services have been utilized and to what extent.
3. Setting standards to ensure collection processes are safe, confidential and that all persons involved in the collection of data are properly trained.
 4. Ensuring timely analysis of the data and its wide dissemination.

UNDP Support for the Implementation of State Duties

UNDP in ALBANIA

UNDP Albania supported training sessions for professionals involved in the delivery of services to victims of domestic violence as required under the Law on Measures for Prevention of Violence In Family Relations 2006.

The training included understanding the new legal framework, understanding the changes the new law required in service delivery, and understanding the rationale for the changes.

UNDP in KOSOVO¹¹²

UNDP Kosovo has provided ongoing support for the implementation of state duties created by the Domestic Violence Act 2010 through:

- support for the drafting of the National Strategy and Action Plan against Domestic Violence (2011-2014);
- provision of technical and advisory support for the establishment of the inter-ministerial working group responsible for the implementation of the National Strategy and Action Plan against Domestic Violence;
- provision of funding and technical expertise to train judges, prosecutors, police officers and victims' advocates on the implementation of the domestic violence legislation and regulations;
- protection of victims.

Funding mechanism

The legislation should ensure adequate funding is allocated for the performance of duties that the legislation places on the state.¹¹³

Good practice components of a funding mechanism include:

1. An adequate level of funding including a designated amount from government revenue;
2. An independent body authorized to manage and distribute the funding;
3. Guidelines on what the funds can be spent on including:
 - the regular review of the law;
 - the establishment and monitoring of shelters;
 - the establishment of longer term housing for victims;

¹¹² Kosovo is hereafter referred to in the context of the UN Security Council Resolution 1244 (1999).

¹¹³ This has been repeatedly recommended by the CEDAW Committee. See Concluding Comments of the CEDAW Committee: Estonia (2007) 39th Session at para [11] (UN Doc CEDAW/C/EST/CO/4); Croatia (2005) 32nd Session at para [26] (UN Doc CEDAW/C/CRO/CC/2-3; Indonesia (2007) 39th Session at para [15] (UN Doc CEDAW/C/IDN/CO/5); Lithuania (2008) 41st Session at para [17] (CEDAW/C/LTU/CO/4).

- the establishment of legal services for victims;
- the establishment of medical and counseling services for victims;
- education and awareness raising about domestic violence and the law itself;
- mandatory training on domestic violence for police, judges and direct service providers;
- gathering of data and statistics on domestic violence;
- any other activity in relation to the implementation of the legislation.¹¹⁴

GOOD PRACTICE EXAMPLE

Domestic Violence Act 2007 (Ghana)

The legislation establishes a fund administered by a Victims of Domestic Violence Management Board. The Board consists of a chairperson who is the Minister of Women and Children's Affairs, representatives from a range of Ministries including health, education, local government, police, social welfare and the Attorney-General, 2 representatives from civil society organizations and 4 persons nominated by the President. The Act does not identify a designated amount from the state, which would strengthen it, but clearly identifies the purposes for which the funding should be spent.

31. The moneys of the Fund shall be applied:

- toward the basic material support of victims of domestic violence;
- for training the families of victims of domestic violence;
- for any matter connected with the rescue, rehabilitation and reintegration of victims of domestic violence;
- towards the construction of shelters for victims of domestic violence in regions and districts;
- for training and capacity building of persons connected with the provision of shelter, rehabilitation and reintegration.

The Management Board must submit an annual report on spending to Parliament.

UNDP Support for the Costing of Domestic Violence Legislation

Assessing the costs of implementing domestic violence legislation (known as costing) is an important aspect of the legislative process. Some legislatures require a costing before a Bill can be enacted and in all cases providing the government with an estimate of the costs of implementing the legislation may assist in its speedy enactment.

UNDP PACIFIC CENTRE

In the Pacific region domestic violence legislation has been enacted in Vanuatu, PNG, Tonga, and Fiji and Bills have been drafted in the Cook Islands, Tuvalu, Kiribati, Samoa and the Solomon Islands.

The UNDP Pacific Centre was requested by the governments of the Cook Islands, Palau, and the Marshall Islands to cost the implementation of their domestic violence laws. The aim of the costing was to facilitate the allocation of adequate resources in each country for the implementation of the laws, and at the same time to provide guidance as to which government office is responsible for which area of the law's implementation. The costing exercises did not attempt to assess the cost domestic violence generates on the national economy, but rather the cost of all necessary steps to implement the laws, and across all relevant Ministries (Police, Judiciary, Health, Internal Affairs, and Education).

The costing looked therefore at the costs that were additional to what already was in place in the three countries. Examples of costs calculated in the exercise included: additional staff in key Ministries; across-the-board training for Ministry staff and service providers on the new bill; the development and printing of outreach and training materials; the cost of developing very specific skills, such as doctors' capacity to gather forensic evidence in cases of sexual abuse that could be used for proceedings in court; and the costing of

¹⁰⁵ For a further good practice example of a funding mechanism see Part VII Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004 (Cyprus). http://www.coe.int/t/dghl/standardsetting/violence/Cyprus_The%20Violence%20in%20the%20Family%20Law%202000%20and%202004.pdf

services (such as shelter, support groups, counseling, a hotline, and legal aid). Some services did not require any extra funding (because existing staff and resources were considered sufficient) but were included to provide an overall perspective on what would be needed to implement the law.

The costing exercises were prepared with the knowledge that resources would be primarily allocated from national budgets and the cost had to reflect the country's financial situation and constraints. The cost for the laws' implementation was distributed over three years to allow for repeat activities and a longer-term approach, and to also take into account challenges of implementing the law simultaneously across a large geographic area. Pacific Island countries are typically dispersed with low population bases living in numerous but very remote islands and rural areas that are difficult and expensive to reach. Implementing laws and providing services across the country therefore presents unique challenges with regards to resource and staffing constraints. In both the Marshall Islands and Palau, the governments have successfully used the costing exercises to secure the allocation of resources from the national budgets towards the laws' implementation, which is an important first step to ensure legislative implementation. .

UNDP in ALBANIA

In Albania, UN Women and UNDP supported an Albanian NGO which, in collaboration with an international consultant, conducted a costing study of issuance of protection orders under the Law On Measures for Prevention of Violence In Family Relations.

The study was limited to four districts of Albania, and assessed the costs of the police, prosecution, courts and the victim in relation to the issuance of protection orders. A wider assessment of the costs of all services in the 4 districts will follow.

Monitoring mechanism

In order to ensure that the state performs the duties placed on it a monitoring process should be included in the legislation. A good practice approach is to establish or nominate an independent institution to monitor state duties. Zambia, for example, establishes the Anti-Violence Committee to monitor the activities of all the institutions and parties who are obliged to act under the legislation.

The Committee is made up of representatives from a range of Ministries, a representative from the Human Rights Commission, a representative the House of Chiefs, the police-force, a NGO working in the area of gender-based violence.¹¹⁵ The legislation however does not specify any procedures for the monitoring process.

A frequently employed monitoring procedure is an obligation to report to parliament. An effective reporting process has a number of key components as follows:

- reporting should be mandatory and regular, for example, annually;
- the report should review in detail the measures adopted to implement the legislation, for example, an overview of the support services established including, usage, and outcomes;
- the report should demonstrate the progress made towards the objectives of each adopted measure and identify obstacles to the full achievement of the objectives;
- a clear mandatory follow-up procedure should be established requiring the relevant state agency to act to remedy any gaps or failures.

UNDP Support for the Inclusion of State Fund and a Monitoring Mechanism

UNDP in KOSOVO

¹⁰⁶ Anti-Gender-Based Violence Act 2011 (Zambia), Part 5.

UNDP Kosovo provided technical support for the drafting of the Domestic Violence Act during 2009. In January 2010, the Kosovo Assembly conducted its first hearing of the draft Bill. The draft Bill passed through the first Assembly hearing.

Prior to the second Assembly hearing, UNDP Kosovo organized a round table meeting in which representatives of line ministries, civil society, shelters, as well as prosecutors and judges from district courts.

The round table made recommendations to improve the Bill including the establishment of a state fund for victims of domestic violence and the inclusion of a monitoring mechanism to ensure the implementation of the legislation. On 1 July 2010, the Kosovo Assembly approved the bill.

3.8 Police Duties

Why place duties on the police?

A duty on the police requiring an appropriate response to domestic violence can be critical to ensuring the safety of women and children. Historically, the concern of the state to protect the privacy and the unity of the family has led the police and other enforcement agencies to treat domestic violence as a private matter which should be resolved by the parties themselves without police or other state interference.

The police are, however, well placed to ensure that victims are protected and that offenders are prosecuted. Police capacity, attitude, and corruption is, however, a serious problem in some countries and the national context must be considered carefully in determining what duties and associated powers should be placed on and given to the police generally.

What duties should be placed on the police?

A range of positive duties should be placed upon police officers to ensure that persons in vulnerable domestic situations are provided with appropriate legal protection and to send a message to the community and the offender that domestic violence is unacceptable and the police are obligated to act. Duties on the police should include:

- A duty to **respond to and investigate every report** of domestic violence.
- A duty to apply **for and/or issue protection orders when domestic violence has or is likely to occur**. This deflects blame from the victim by making domestic violence a police matter,¹¹⁶ frees the victim from difficult decisions regarding the exclusion of partners and family members from the family home.¹¹⁷ It prevents the offender from pressuring a victim to withdraw an application for a protection order.¹¹⁸ If the police-officer does not apply for an order she or he must record the reasons and submit them to a senior officer.
- A duty to **inform victims of their right to apply for a protection order**.
- A duty to **pursue pro- prosecution policies** when domestic violence has occurred. This frees the victims from difficult decisions regarding the prosecution of partners or family. It should be noted, however, that strong arguments have been raised that mandatory prosecution disempowers victims of domestic violence by taking away their choice and placing a penalty on the offender that the victim may not desire.
- A duty to **assist the victim to obtain medical treatment**, where necessary.
- A duty to **assist the victim to a place of safety** as the circumstances requires.
- A duty to **record all incidents** of domestic violence to enable police to respond appropriately to any further acts of violence and for the purpose of gathering statistics.
- A duty to **ensure that staffs trained in domestic violence are available**.

¹⁰⁷ A Klein, "Re-Abuse in a Population of Court-Restrained Male Batterers" in E Buzawa & C Buzawa (eds) *Do Arrests and Restraining Orders Work?* (Beverly Hills: Sage, 1996) 192.

¹⁰⁸ C Hanna, "No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecution" (1996) 109(8) *Harvard Law Review* 1849.

¹⁰⁹ T Kuenhen, "Analysing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much?" (2007) 22 *Berkeley Journal of Gender and Justice* 1 at 11.

Police Duties

1. To investigate suspected or reported domestic violence

Good Practice Examples:

Domestic Violence Act 2007 (Ghana)

8(1). When a police officer receives a complaint under section 6(6), the officer shall:

- (a) interview the parties and witnesses to the domestic violence including children,
- (b) record the complaint in detail and provide the victim with an extract of the occurrence upon request in a language the victim understands.

Regarding Elimination of Violence in the Household 2004 Law No 23 (Indonesia)

Article 19. The police shall be obliged to immediately conduct an investigation after knowing or receiving a report regarding the occurrence of violence in the household.

2. To inform the victim of their right to apply for a protection order

Good Practice Examples:

Domestic Violence Act 2005 (India)

s8(5). A police officer, protection officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person (a) of her right to make an application for obtaining a relief by way of a protection order.

Family Law Bill (draft) (Cook Islands)

s127(3). A police officer who investigates a complaint of domestic violence and believes domestic violence has been committed, is being committed or is likely to be committed, must immediately inform the protected person of her or his right to make an application for a protection order.

3. To apply for a protection order

Good Practice Example:

Law to Combat Domestic Violence 2005 (Mongolia)

Article 9.1 The police authority shall be responsible for preventing and combating domestic violence as follows: **9.1.8.** to file a petition requesting restraining order to the relevant authorities and officials in charge.

4. To assist the victim to obtain medical treatment

The example of Ghana not only places a mandatory duty on a police officer to assist the victim to obtain medical treatment but provides for that medical treatment to be free.

Good Practice Examples:

Domestic Violence Act 2007 (Ghana)

s8(1). When a police officer receives a complaint under section 6(6), the officer shall (c) assist the victim to obtain medical treatment where necessary.

(2) Police assistance to a victim under subsection (1)(c) consists of issuing a medical form to the victim and where necessary

sending the victim to a medical facility.

(3) A victim of domestic violence who is assisted by the police to obtain medical treatment under subsection (1)(c) is entitled to free medical treatment from the State.

Anti-Violence Against Women and Their Children Act 2004 (Philippines)

530. Barangay officials and law enforcers shall have the following duties: (c) transport or escort the victim/s to a safe place of their choice or to a clinic or hospital.

5. To record the domestic violence for the purposes of statistics

Recording the details of every complaint of domestic violence assists in the compilation of national statistics on domestic violence. This data can be used to implement more effective response and prevention policy measures.

Good Practice Example:

Domestic Violence Act 2007 (Belize)

524(2) It shall be the duty of a police officer responding to a domestic violence complaint to complete a domestic violence report which shall form part of a National Domestic Violence Register to be maintained by the Commissioner of Police.

(3) A domestic violence report shall be in the form prescribed as "Form 7" of the Schedule and shall include but not be limited to:

- (a) the name of the parties;
- (b) the relationship and sex of the parties;
- (c) information relating to the history of domestic violence between the parties.

6. To assist the victim to a safe place

Good Practice Example:

Maria Da Penha Law 2006 (Brazil)

Article 11. In assisting the woman in a situation of domestic and family violence the police authority shall, among other measures: III provide transport to the victim and her dependents to a shelter or safe place, in case of risk of life.

7. To ensure staff trained in domestic violence are available to assist victims.

Good Practice Examples:

Family Protection Bill (Draft) (Kenya)

533(1). There shall be a section or a desk at every police station which shall, where practically possible be managed by at least one police officer with relevant training and expertise in dealing with domestic violence or family-related matters.

Domestic Violence Act 2006 (Zimbabwe)

55(2)(b) ...where a complainant so desires, the statement of the nature of the domestic violence suffered by the complainant shall be taken by a police officer of the same sex as that of the complainant.

3.9 Domestic Violence Regulations

In addition to domestic violence legislation itself, the regulations that accompany them are also important. The primary legislation (i.e. the domestic violence law) can authorize regulations that facilitate the implementation of the domestic violence legislation.

The primary legislation is often more general and establishes broad principles while regulations contain the many details necessary to ensure that the legislation can operate successfully. The primary legislation often sets out specific requirements about the way the regulations are to be made and what the regulations should cover.

It is important therefore that regulations are enacted as soon as possible after the enactment of domestic violence legislation as it is often the regulations that provide many of the critical details for the implementation of the legislation. For example, typically (although not always) the regulations not the legislation itself include the forms that are necessary to apply for a protection order, for serving notice of the application for a protection order and for the protection order itself.

Without these forms the process of applying for and granting a protection order cannot proceed. In other instances the regulations provide the details of how a hearing for a protection order is to proceed, how the service of orders is to be conducted and how particular persons are to be trained for particular roles they have been given under the legislation.

UNDP Support for the Drafting of Regulations

UNDP in ALBANIA

In Albania the Law On Measures for Prevention of Violence In Family Relations was enacted in 2006 placing wide ranging duties on the state to implement national strategies to provide protection and care to the victims of domestic violence including financial assistance, social services and health services, to organize training sessions on domestic violence for service providers, to maintain statistical data on the level of domestic violence and to support and supervise the establishment of rehabilitation centers for domestic violence victims. After the enactment of the law UNDP supported the drafting and enactment of regulations to enable the effective implementation of the new law.

This included regulations to establish a designated government section to take carriage of the new duties under the Act; to define the measures the police must take to respond to domestic violence victims and to establish procedures for the provision of medical service to victims of domestic abuse and to record keeping.

UNDP in KOSOVO

The Law on Domestic Violence 2010 required regulations to be enacted six months after the Law's adoption. UNDP Kosovo supported two sets of regulations.

The first regulates and determines the place and manner of implementing psychosocial treatment for perpetrators and the second regulates compulsory medical treatment of perpetrators of domestic violence, who are addicted to alcohol and psychotropic substances.

UNDP in BOTSWANA

The Domestic Violence Act was enacted in Botswana in 2008 however because no regulations were enacted the legislation was not fully and effectively implemented. UNDP Botswana in collaboration with partners provided funding to the Women's Affairs

Department for consultancy services for the drafting of the regulations. The draft regulations were completed early October 2012 and will be submitted to Parliament for its consideration in its seating in November 2012.

The next “red flag” section provides examples of provisions that are included in some domestic violence legislation that do not represent good practice. Examples include reconciliation and forgiveness ceremonies, mediation procedures and mandatory counseling for victims.

DRAFT

Red Flag Section – Avoiding Problems

The following are examples of issues found in some the domestic violence legislation that do not represent good practice measures for domestic violence victims.



RECONCILIATION AND FORGIVENESS

What are reconciliation and forgiveness ceremonies?

Reconciliation, forgiveness or 'grace solution' ceremonies bring the offender and the victim together, usually with a moderator and family and friends present. The process varies in different countries but generally involves apologies, prayer and a feast, as well as the exchange of valuables or money as compensation typically paid to the family rather than to the specific victim.

Why should they be excluded from domestic violence legislation?

While these ceremonies or mechanisms are important in many contexts and can be very relevant for resolving a range of issues, they are not appropriate for domestic violence. This is because the goal of reconciliation and forgiveness ceremonies is community and family harmony rather than the recognition of the individual rights of those experiencing domestic violence. Specifically, if reconciliation or forgiveness replaces criminal prosecution and the issuing of protection orders, no legal protection is provided for the victim. Many women have expressed dissatisfaction with such approaches to domestic violence which they argue do not address their personal suffering nor guarantee them protection from further violence.



MEDIATION

What is mediation?

Mediation is a decision-making process in which the parties, assisted by a third party, the mediator, attempt to reach an agreement on particular issues without having to go to court (or back to court).

Why should mediation not be part of domestic violence legislation?

No victim of domestic violence, or person that is in fear of domestic violence either an adult or a child should be placed in a situation where they have to interact and negotiate with an offender or a member of the offender's family. The offender or the offender's family may intimidate a victim who is fearful for her safety into making agreements that are not in the interests of the victim or her children.



MANDATORY COUNSELING FOR VICTIMS

What are the benefits of counseling for victims?

Counseling can offer a supportive confidential relationship during a time of crisis and a safe place to express emotions without fear of being stigmatized. It can assist a victim to explore more effective ways of responding to their situation and provide them with information to help make informed decisions and choices.

Why should mandatory counseling for victims be excluded from the legislation?

Counseling can be beneficial for victims however their autonomy should be respected and it should be their own choice as to whether they wish to attend. A court should not be able to direct a victim to counseling.

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APPENDIX - Draft and enacted domestic violence legislation

Countries	Legislation		Year Enacted	URL Links
OCEANIA				
Australia	Old	Domestic and Family Violence Protection Act	1989	http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/D/DomeFamVPA89.pdf http://www.austlii.edu.au/au/legis/qld/consol_act/dafvpa1989379/
	NSW	Crimes (Domestic and Personal Violence) Act	2007	http://www.austlii.edu.au/au/legis/nsw/consol_act/capva2007347/ http://www.legislation.nsw.gov.au/info/pdf/200780.pdf?id=9afb1657-ce02-e82e-ddb5-8cb4129ebb2d
	Tas	Family Violence Act	2004	http://www.safeathome.tas.gov.au/__data/assets/pdf_file/0009/27585/Family_Violence_Act_2004.pdf http://corrigan.austlii.edu.au/au/legis/tas/consol_act/fva2004158
	WA	Restraining Orders Act	1997	http://corrigan.austlii.edu.au/au/legis/wa/consol_act/ro82a1997200/
	SA	Domestic Violence Act	1994	http://www.legislation.sa.gov.au/LZ/C/A/DOMESTIC%20VIOLENCE%20ACT%201994/2004.06.30/1994.22.PDF
	NT	Domestic and Family Violence Act	2007	http://www.austlii.edu.au/au/legis/nt/nam_act/dafva20073402007300/
	ACT	Domestic Violence and Protection Orders Act	2008	http://corrigan.austlii.edu.au/au/legis/act/consol_act/dvapo2008392/
	Vic	Family Violence Protection Act	2008	http://www.austlii.edu.au/au/legis/vic/consol_act/fvpa2008283/ http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/fe8c78a4d2fb8494ca257981000f3a61!OpenDocument
Fiji	Domestic Violence Decree		2009	http://www.judiciary.gov.fj/Forms%20&%20Fees/Domestic%20Violence%20Decree%202009.pdf http://www.paclii.org/fj/promu/promu_dec/dvd2009191/
Kiribati	Te Rau N Te Mweenga Bill		Draft	

Countries	Legislation		Year Enacted	URL Links
Marshall Islands	Domestic Violence Prevention and Protection Bill		Draft	
New Zealand	Domestic Violence Act		1995	http://www.legislation.govt.nz/act/public/1995/0086/latest/DLM371926.html
Palau	Family Protection Act		2012	
Papua New Guinea	Family Protection Bill		2013	
Samoa	Family Safety Act		2013	http://www.parliament.gov.ws/images/Acts_2013/Family_Safety_Act_2013_-_Eng.pdf
Tonga	Family Protection Act		2013	
Tuvalu	Family Protection and Domestic Violence Bill		Draft	
	Police Powers and Duties Act (Sections 40-51)		2009	http://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/2009/2009-0012/PolicePowersandDutiesAct2009_1.pdf
Vanuatu	Family Protection Act		2008	http://www.paclii.org/vu/legis/num_act/fpa2008206/
ASIA				
Afghanistan	Law on Elimination of Violence Against Women		2009	http://www.saarcgenderinfobase.org/programs/detail.php?aid=105&catid=3
Bangladesh	Domestic Violence (Protection and Prevention) Act		2010	
	Suppression of Violence Against Women and Children Act		2000	
Bhutan	Domestic Violence Bill		Draft	
Brunei Darussalam	Domestic Violence Order		Draft	
	Penal Code Chapter 22 (Sections 322, 324, 334, 375)		2009	
Cambodia	Law on the Prevention of Domestic Violence and the Protection of Victims		2005	
China	China	Law of the People's Republic of China on the Protection of the Rights and Interests of	2005	http://www.wmc.org.kh/index.php/law-on-the-prevention-of-violence-

Countries	Legislation		Year Enacted	URL Links
		Women		against-women
	Hong Kong	Domestic Violence Ordinance	1986	http://www.wcwonline.org/pdf/lawcompilation/HongKong-Domestic%20ViolenceOrdinance.pdf
	Taiwan	Domestic Violence Prevention Act	1998	
India	Protection of Women from Domestic Violence Act		2005	http://www.lawyerscollective.org/files/protection_of_women_from_domestic_violence_act_2005.pdf http://www.vakilno1.com/bareacts/domesticviolence/domestic-violence-act-2005.htm
Indonesia	Law No. 23 of 2004 Regarding Elimination of Household Violence		2004	http://sgdatabase.unwomen.org/uploads/Indonesia%20%20Law%20No%2023%202004_Elimination%20on%20Violence%20in%20Household.pdf http://www.wcwonline.org/pdf/lawcompilation/Indonesia-Regarding-Elimination-of-Violence-in-Household.pdf
Japan	Act on the Prevention of Spousal Violence and the Protection of Victims		2001	http://www.internationaldivorce.com/Japanese_Law_Act_on_the_Prevention_of_Spousal_Violence_and_the_Protection_of_Victims
Laos	Law on the Development and Protection of Women		2004	http://www.ilo.org/dyn/travail/docs/1425/Law%20on%20the%20Development%20and%20Protection%20of%20Women%202004.pdf
Malaysia	Domestic Violence Act		1994	http://www.hsph.harvard.edu/population/domesticviolence/malaysia.dv.g4.doc http://www.wcwonline.org/pdf/lawcompilation/malaysia_DVact1994.pdf
Mongolia	Law to Combat Domestic Violence		2005	http://sgdatabase.unwomen.org/uploads/Law%20to%20combat%20domestic%20violence%20-%202005.pdf
Nepal	Domestic Violence (Offense and Punishment) Act 2066		2009	http://sgdatabase.unwomen.org/uploads/DV%20(Crime%20and%20Punishment)%20Act%202009.pdf
Pakistan	Protection and Empowerment of Women Act		Draft	

Countries	Legislation	Year Enacted	URL Links
	Domestic Violence (Prevention and Protection) Bill		
Philippines	Anti-Violence Against Women and their Children Act	2004	http://www.chanrobles.com/republica/ctn09262.html
Republic of Korea	Act on the Prevention of Domestic Violence and the Protection of its Victims	2006	http://www.hsph.harvard.edu/population/domesticviolence/korea.dv.97.pdf
	Revised Special Act on the Punishment of Domestic Violence	2007	
Sri Lanka	Prevention of Domestic Violence Act (No. 34)	2005	http://www.commonlii.org/lk/legis/num_act/podva3402005371/ http://sgdatabse.unwomen.org/uploads/Sri%20Lanka%20%20Prevention%20of%20Domestic%20Violence%20Act%20(2005).pdf
Thailand	Protection of Domestic Violence Victims Act B.E. 2550	2007	http://sgdatabse.unwomen.org/uploads/DV%20PTC%20ACT%202550%20-%202007.pdf
Timor Leste	Law Against Domestic Violence	2010	http://sgdatabse.unwomen.org/uploads/Timor%20Leste%20%20Law%20Against%20Domestic%20Violence%20Law%20No.%207-2010%20(English).pdf
Vietnam	Law on Domestic Violence Prevention and Control	2007	http://www.hsph.harvard.edu/population/domesticviolence/vietnam.domviol.07.doc
EUROPE			
Albania	Law On Measures for Prevention of Violence In Family Relations	2006	http://www.coe.int/t/dghl/standardsetting/violence/Albanian%20DV%20law.pdf
Azerbaijan	Law on Prevention of Domestic Violence	2010	http://sgdatabse.unwomen.org/uploads/Law%20on%20Prevention%20of%20Domestic%20Violence%202010.pdf
Belarus	Law on the Foundations of Activities for Preventing Crimes	2009	
	Law on Domestic Violence	Draft	
Bosnia and Herzegovina	Law on Protection against Domestic Violence	2005	http://www.hsph.harvard.edu/population/domesticviolence/bosnia.domesticviol.05.pdf
Georgia	Law On the Prevention of Domestic	2006	http://www.coe.int/t/dghl/standardset

Countries	Legislation	Year Enacted	URL Links
	Violence, Protection and Assistance of Victims of Domestic Violence		ting/violence/The%20Collection%20of%20Georgian%20Normative%20Acts%20on%20Domestic%20Violence.pdf
Kazakhstan	Law on Prevention of Domestic Violence	2009	http://www.legislationline.org/documents/id/16323
Kosovo	Law on Protection Against Domestic Violence	2010	http://legislationline.org/download/action/download/id/3372/
Kyrgyzstan (Republic of Kyrgyz)	Law on Social and Legal Protection from Violence within the Family (Law No 62)	2003	
Liechtenstein	Violence Protection Act	2001	
Moldova (Republic of)	Law on Preventing and Combating Family Violence	2008	http://legislationline.org/download/action/download/id/3372/
Montenegro	Law on Domestic Violence Protection	2010	http://www.legislationline.org/download/action/download/id/3405/file/Montenegro_Law%20against%20Family%20Violence_2010_en.pdf
Norway	Law Introducing a Statutory Municipal Duty to Provide Shelter Services	2010	
	General Civil Penal Code (Section 219)	2006	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_penal_code.pdf
Serbia	Family Law (No18/2005)	2005	
	Criminal Code of Republic of Serbia (Article 194).	2005	http://www.osce.org/serbia/18244
Srpska (Republic of)	Law on Protection against Domestic Violence	2005	http://sgdatabase.unwomen.org/uploads/Republika%20Srpska%20-%20Law%20on%20Protection%20from%20Domestic%20Violence%202005.doc
	<i>Criminal Code (Article 208)</i>	2002	
Switzerland	Civil Code (Article 28)	1996	
Tadjikistan	Has one too if I'm not mistaken		
Turkey	Law to Protect Family and Prevent Violence Against Women No 6284	2012	http://sgdatabase.unwomen.org/searchDetail.action?measureId=54083&baseHref=country&baseHrefId=1326
Republic of	Law on Family No 83	2004	

Countries	Legislation	Year Enacted	URL Links
Macedonia	Systematization Act	2006	
	Law Amending the Criminal Code No 19 (Article 122)	2004	
EUROPEAN UNION			
Austria	Protection Against Violence Act	1997	http://sgdatabase.unwomen.org/uploads/Protection%20Against%20Violence%20Act%201997.pdf
	Second Protection Against Violence Act	2009	http://sgdatabase.unwomen.org/uploads/Second%20AFAPADM%20-%202009%20-%20German.pdf
	Lower Austrian Law for Social Support	2008	
Belgium	Law to Combat Domestic Violence Between Partners	1997	http://sgdatabase.unwomen.org/uploads/Loi%20sur%20la%20Violence%20a%20l'egard%20du%20Couple%201997.pdf
	Act to Award the Family Home to the Spouse, Legal Cohabitant or Victim of Physical Violence and to Complete Article 410 of the Penal Code	2003	http://sgdatabase.unwomen.org/uploads/Belgium%20-%20Loi%20visant%20la%20l'attribution%20du%20logement%20familial.pdf
Bulgaria	Protection Against Domestic Violence Act	2005	http://www.mlsp.government.bg/equal/equalen/Protection_Against_Domestic_Violence_Act_BG.doc
Croatia	Act on Protection against Family Violence	2003	
	Rules of Procedure in Cases of Family Violence	2005	
Cyprus	Violence in the Family (Prevention and Protection of Victims) Law	2000	http://www.coe.int/t/dghl/standardsetting/violence/Cyprus_The%20Violence%20in%20the%20Family%20Law%202000%20and%202004.pdf
Czech Republic	Protection against Domestic Violence No 135	2006	
	Act No. 91 (introducing 215a into the Criminal Code)	2004	
Denmark	Removal and Powers to Issue Exclusion Orders Act No 449	2004	
Estonia	Victim Support Act	2004	http://sgdatabase.unwomen.org/uploads/Estonia%20-%20Victim%20Support%20Act.pdf

Countries	Legislation	Year Enacted	URL Links
			%20Victim%20Support%20Act.pdf
	Code of Civil Procedure	2006	
Finland	Act on Restraining Orders No 898	1998	• http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf
France	Specifically on Violence Against Women, Violence within Couples and the Impact it has on Children Act No 769	2010	• http://sgdatabase.unwomen.org/uploads/Loi%202010.pdf
Germany	Act on Civil Law Protection against Violence	2005	• http://sgdatabase.unwomen.org/uploads/Germany%20-%20Act%20on%20Civil%20Law%20Protection%20against%20Violent%20Acts%20and%20Stalking%20-%202001.pdf
	Act to Criminalize Persistent Stalking	2006	
Greece	For Combating Domestic Violence No 3500	2006	
Italy	Measures Against Violence in Family Relations No 304 (amending the Civil Code)	2003	
	Measures Against Violence in Family Relationships No 154	2001	
Ireland	Domestic Violence Act	1996	• http://www.irishstatutebook.ie/1996/en/act/pub/0001/index.html
Lithuania	Law on Protection from Domestic Violence	2011	• http://www.coe.int/t/dghl/standardsetting/violence/The%20Collection%20of%20Georgian%20Normative%20Acts%20on%20Domestic%20Violence.pdf
Luxembourg	Domestic Violence Act	2003	• http://www.legislationline.org/documents/id/16323
Malta	Domestic Violence Act	2006	• http://www.coe.int/t/dghl/standardsetting/violence/Malta%20Chapt481%20domestic%20violence%20act.pdf
Moldova	Law on Preventing and Combating Family Violence No 45-XVI	2007	• http://www.coe.int/t/dghl/standardsetting/violence/Moldovan%20law%20on%20family%20violence%20_EN.pdf
Netherlands (The)	Summary Temporary Restraining Order Act	2008	• http://sgdatabase.unwomen.org/uploads/the%20Netherlands%20-%20Wet%20huisverbod%20STB%20(2008).pdf

Countries	Legislation		Year Enacted	URL Links
Poland	Counteracting Family Violence		2005	http://www.coe.int/t/dghl/standardsetting/violence/The%20Collection%20of%20Georgian%20Normative%20Acts%20on%20Domestic%20Violence.pdf
	Penal Code, Article 207		1997	http://www.legislationline.org/documents/id/16323
Portugal	Criminal Code (Article 152 introduced by Law 59)		2007	
	Law to Provide Compensation to Victims of Domestic Violence in Cases of Extreme Need No 129		1999	
	Law Creating a National Network of Women Shelters No 107		1999	
Romania	Law No. 217/2003 on the Preventing and Fighting Against Family Violence		2003	http://legislationline.org/download/action/download/id/3372/
Slovakia	Law on Violence Against Close Persons			
	Act 491 amending the Police Forces Act		2008	
United Kingdom	Domestic Violence Crimes and Victims Act		2004	http://sgdatabase.unwomen.org/uploads/United%20Kingdom%20-%20Domestic%20Violence%20Crime%20and%20Victims%20Act%20(2004).pdf
	Bermuda	Domestic Violence (Protection Orders) Act	1997	http://www.hsph.harvard.edu/population/domesticviolence/bermuda.dv.97.pdf
MIDDLE EAST AND NORTH AFRICA				
Egypt	Law No 6		1998	
Iraq (Kurdistan)	Anti-Domestic Violence Law		2011	
Israel	Prevention of Family Violence Law No 575 ¹		1991	http://sgdatabase.unwomen.org/uploads/Israel%20-%20Prevention%20of%20Family%20Violence%20Law.pdf
	Prevention of Stalking Law		2001	
Jordan	Protection From Domestic Violence Act		2008	http://www.hsph.harvard.edu/population/domesticviolence/domesticviolence.htm
Lebanon	Law to Protect Women from Family		Draft	

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	Violence		
Saudi Arabia	Decree No 366 (3/12/1429 AH) On Measures Relating to the Elimination of Domestic Violence	2008	
Tunisia	Penal Code (Article 218 amended in 2005)	1913	
	Personal Status Code (Article 31)	1956	
Yemen	Domestic Violence Act No 6	2008	
SUB-SAHARAN AFRICA			
Angola	Law on Domestic Violence	2011	
Botswana	Domestic Violence Act	2008	http://sgdatabase.unwomen.org/uploads/DV%20Act%202008.pdf
Cameroon	Prevention and Punishment of Violence against Women and of Gender-Based Discrimination	Draft	
Cape Verde	Law No 84/VII on Gender-Based Violence	2011	http://www.docstoc.com/docs/70110901/Republic-of-Cape-Verde-National-Assembly-Law-No-84
Central African Republic	Act No 06032 on the Protection of Women against Violence	2006	http://sgdatabase.unwomen.org/uploads/Loi%202006%20sur%20Protection%20de%20la%20Femme%20contre%20la%20Violence.pdf
Ghana	Domestic Violence Act No 732	2007	http://www.mowacghana.net/download/Domestic%20Violence%20Act.pdf
Kenya	Family Protection Bill	Draft	http://sgdatabase.unwomen.org/uploads/Family%20Protection%20Bill%202007.doc
Lesotho	Domestic Violence Bill	Draft	
Malawi	Act 5 Protection Against (Prevention of) Domestic Violence	2006	http://www.chr.up.ac.za/undp/domestic/docs/legislation_13.pdf
Mauritius	Domestic Violence Act	1997	
Mozambique	Law on Domestic Violence Perpetrated Against Women	2009	http://sgdatabase.unwomen.org/uploads/Law%20on%20DV%20-%202009%20-%20in%20Portuguese.pdf
Nigeria		Draft	
	Elimination of Violence in Society Bill	Draft	http://sgdatabase.unwomen.org/uploa

Countries	Legislation		Year Enacted	URL Links
				ds/Elimination%20of%20Violence%20Bill%20-%202006.pdf
Namibia (Republic of)	Combating of Domestic Violence Act		2003	http://www.chr.up.ac.za/undp/domestic/docs/legislation_16.pdf
Rwanda	Law on Prevention and Punishment of Gender-Based Violence		2008	http://www.gnpplus.net/criminalisation/images/stories/documents_africa/rwanda_-_legislation.pdf
Sierra Leone	Domestic Violence Act		2007	http://www.sierra-leone.org/Laws/2007-20p.pdf
South Africa	Domestic Violence Act		1998	http://www.chr.up.ac.za/undp/domestic/docs/legislation_18.pdf
Uganda	Domestic Violence Act		2010	http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_172625.pdf
Zambia	Anti-Gender-Based Violence Act		2011	http://www.undp.org.zm/joomla/attachments/050_Anti-Gender-Based_Violence_Act1.pdf?8e2474a80d13c9785641fc2923161380=wnpfzqni https://icglr.org/IMG/pdf/Zambia_Anti-Gender-Based_Violence_Act1.pdf
Zimbabwe	Domestic Violence Act		2007	http://www.kubatana.net/docs/legisl/dom_viol_act_ch5_16_act%2014_2006_070226.pdf
NORTH AMERICA				
Canada	Ont	Domestic Violence Protection Act	2000	http://www.e-laws.gov.on.ca/html/source/statutes/english/2000/elaws_src_s00033_e.htm
	Alb	Protection Against Family Violence Act	2000	http://www.canlii.org/en/ab/laws/stat/rsa-2000-c-p-27/latest/rsa-2000-c-p-27.html
	Man	Domestic Violence and Stalking Act	1999	http://web2.gov.mb.ca/laws/statutes/cscsm/dog3e.php
	NL	Family Violence Protection Act	2005	http://assembly.nl.ca/Legislation/sr/statutes/fo3-1.htm
	NWT	Protection Against Family Violence Act	2005	http://www.justice.gov.nt.ca/legislation/..%5CPDF%5CACTS%5CProtection%20Against%20Family%20Violence.pdf

Countries	Legislation		Year Enacted	URL Links
	PEI	Victims of Family Violence Act	1996	http://www.gov.pe.ca/law/statutes/pdf/v-03_2.pdf
	Yuk	Family Violence Protection Act	1997	http://www.gov.yk.ca/legislation/acts/favipr.pdf
	NS	Domestic Violence Intervention Act	2001	http://nslegislature.ca/legc/statutes/domestcv.htm
	Sas	Victims of Domestic Violence Act	1995	http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/V6-02.pdf
	Nu	Family Abuse Intervention Act	2006	http://www.canlii.org/en/nu/laws/stat/snu-2006-c-18/latest/part-1/snu-2006-c-18-part-1.pdf
United States	Violence Against Women Act		1994	
LATIN AMERICA				
Argentina	Law to Protect, Prevent, Punish and Eradicate Violence Against Women in Areas in Which to Develop their Interpersonal Relations		2009	http://www.unhcr.org/refworld/country,,NATLEGBOD,,ARG,,4a016dd62,o.html
Belize	Domestic Violence Act		2007	http://www.hsph.harvard.edu/population/domesticviolence/belize.dv.92.pdf http://sgdatabase.unwomen.org/uploads/Domestic%20Violence%20Act%202007.pdf
Bolivia	Law Against Family or Domestic Violence No 1674		1995	http://www.hsph.harvard.edu/population/domesticviolence/bolivia.dv.95.htm
Brazil	Maria da Penha Law No 11340		2006	http://sgdatabase.unwomen.org/uploads/Brazil%20-%20Maria%20da%20Penha%20Law%20(2006).pdf http://www.mercosurmujeres.org/userfiles/file/ley%20maria%20openha%20e spa%C3%B1ol%281%29.pdf
	Law 11.340		2006	
	Law No 10.886 (amends the Penal Code)		2005	
	Law No 10.778		2003	
	Law 20.666 on Domestic Violence		2005	http://sgdatabase.unwomen.org/uploads/Ley%2020066%20of%202005%20on%20Domestic%20Violence.pdf

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Colombia	Law to Establish Rules on the Awareness, Prevention and Punishment of Forms of Violence and Discrimination against Women No 1257	2008	http://www.cepal.org/oig/doc/Col2008LEY1257ViolenciaContraMujeres.pdf
	Law on Domestic Violence No 294	1996	
Costa Rica	Law Penalizing Violence against Women No 8589	2006	http://ministeriopublico.poder-judicial.go.cr/coop-intern/Normativa%20Nacional/04-Delitos%20Sexuales/04.pdf
	Domestic Violence Law No 7586	1996	http://www.glin.gov/view.action?glinID=49582
Ecuador	Decree No 620 (which aims to eradicate gender-based violence against girls, children, adolescents and women)	2007	http://sgdatabase.unwomen.org/uploads/Ecuador%20-%20decreto%20620.pdf
	Law Against Violence Against Women and Family	1995	http://sgdatabase.unwomen.org/uploads/Ecuador%20-%20Ley%20contra%20la%20violencia%20a%20la%20mujer%20y%20la%20familia.pdf
El Salvador	Law Against Domestic Violence	1996	http://sgdatabase.unwomen.org/uploads/El%20Salvador%20-%20Ley%20contra%20la%20Violencia%20Intrafamiliar.pdf
	Law for a Life Free of Violence Against Women	2011	http://sgdatabase.unwomen.org/uploads/Ley%20Especial%20Integral%20Vida%20Libre%20Violencia%20Mujeres%20-%202011.pdf
Guatemala	Law Against Femicide and Other Forms of Violence Against Women	2008	http://www.oas.org/dil/esp/Ley_contra_el_Femicidio_y_otras_Formas_de_Violencia_Contra_la_Mujer_Guatemala.pdf
	Act on the Prevention, Punishment and Eradication of Domestic Violence	1996	http://sgdatabase.unwomen.org/uploads/Guatemala%20-%20Ley%2097-96.pdf
	Decree to Make Operative the Law on Domestic Violence	2000	
Guyana	Domestic Violence Act	1996	http://sgdatabase.unwomen.org/uploads/El%20Salvador%20-%20Ley%20contra%20la%20Violencia

Countries	Legislation	Year Enacted	URL Links
			%20Intrafamiliar.pdf
Honduras	Domestic Violence Act	1997	http://sgdatabase.unwomen.org/uploads/Ley%20Especial%20Integral%20Vida%20Libre%20Violencia%20Mujeres%20-%202011.pdf
Mexico	General Law on Access of Women to a Life Free of Violence	2007	http://www.oas.org/dil/esp/Ley_contra_el_Femicidio_y_otras_Formas_de_Violencia_Contra_la_Mujer_Guatemala.pdf
	Decree to Reform the Civil Code and Penal Code with Reference to Domestic Violence and Sexual Violence	1997	
Nicaragua	Law Against Violence Against Women	2012	http://sgdatabase.unwomen.org/uploads/Ley%20publicada.pdf
	Law, Amendments and Additions to the Penal Code to Prevent and Punish Domestic Violence Law No 230	1996	http://www.cepal.org/oig/doc/Nica1996Ley230ReformaCodPenal.pdf
	Domestic Violence Offences and Maltreatment of Children Law No 27	1995	http://www.hsph.harvard.edu/population/domesticviolence/panama.dv.95.pdf
Paraguay	Law Against Domestic Violence No 1600	2000	http://www.hsph.harvard.edu/population/domesticviolence/paraguay.dv.00.htm http://sgdatabase.unwomen.org/uploads/Paraguay%20-%20Ley%201600%20violencia%20domestica%20(2000).pdf
Peru	Protection from Family Violence No 262260	1997	http://sgdatabase.unwomen.org/uploads/Texto%20Unico.LeyProteccionFamiliar26260[1].pdf
Uruguay	Law on Prevention, Early Detection, Treatment and Eradication of Domestic Violence No 17514	2002	http://sgdatabase.unwomen.org/uploads/Uruguay%20-%20Ley%201754%20Violencia%20Domestica%20(2002).pdf
Venezuela (Bolivarian Republic of)	Organic Law on the Right of Women to a Life Free of Violence	2006	http://www.cepal.org/oig/doc/VEN2007Leyorganicaderechomujeres.pdf
THE CARIBBEAN			
Antigua and Barbuda	Domestic Violence (Summary Proceedings) Act	1999	http://laws.gov.ag/acts/1999/a1999-3.pdf

Countries	Legislation	Year Enacted	URL Links
Bahamas	Domestic Violence (Protection Orders) Act	2007	http://www.oas.org/dil/The_Domestic_Violence_Act_Bahamas.pdf
Barbados	Domestic Violence (Protection Orders) Act	1993	http://www.cepal.org/oig/noticias/paginas/2/36082/Bar_DomesticViolence_1993.pdf
Dominica	Protection Against Domestic Violence Act No 7758)	2001	
Dominican Republic	Shelters and Sanctuaries Law No 88	2003	http://sgdatabase.unwomen.org/uploads/Ley%20No88-03.pdf
	Law About Domestic Violence No 24	1997	http://sgdatabase.unwomen.org/uploads/LEY%2024-97%20SOBRE%20VIOLENCIA%20INTRA%20FAMILIAR.pdf
Grenada	Domestic Violence Act	2001	http://scm.oas.org/pdfs/2008/CIMo2387TI.pdf
Jamaica	Domestic Violence Act	2004	http://sgdatabase.unwomen.org/uploads/Domestic%20Violence%20Act%202004.pdf
Saint Vincent and the Grenadines	Domestic Violence Summary Proceedings Act	1995	http://www.hsph.harvard.edu/population/domesticviolence/SAINTVINCENTANDTHEGRENADINES.htm
	Domestic Violence and Matrimonial Proceedings Act	1984	
Saint Kitts and Nevis	Domestic Violence Act	2000	
Saint Lucia	Domestic Violence (Summary Proceedings) Act	1995	http://cyber.law.harvard.edu/population/domesticviolence/SAINTLUCIA.htm http://sgdatabase.unwomen.org/uploads/Domestic%20Violence%20Act%201994.pdf