

**State Responses to**

# **Domestic Violence**

**Current Status and Needed Improvements**



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**Women, Law  
& Development  
International**

**1350 Connecticut Ave. N.W.  
Suite 407  
Washington, D.C. 20036**

**Contributing Authors**

Gladys Acosta Vargas, *chapter 3 & 4*

Michelle Beasley, *chapter 2*

Sheila Gyimah, *chapter 2 & 3*

Sakuntala Kardigamar-Rajasingham, *chapter 3 & 5*

Margaret A. Schuler, *chapter 1*

Rebecca P. Sewall, *chapter 4*

Arati Vasan, *chapter 4*

**Editors**

Rebecca P. Sewall

Arati Vasan

Margaret A. Schuler

**Research Assistance**

Katherine Culliton

Mary Schouveiller

Catherine O'Malley

Cyndi Mellon

Design & Layout: Margaret A. Schuler

Cover Design: Xanthus Design

Printing: PressXpress

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## *CONTENTS*

Preface .....	vii
Acknowledgments .....	ix
Introduction .....	1

### **Part I: Gender Violence Strategies**

Chapter 1: Seizing the Strategic Moment .....	9
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### **Part II: The Study**

Chapter 2: International Legal Standards .....	51
Chapter 3: National Laws and Mechanisms .....	65
Chapter 4: Necessary Improvements .....	91

### **Part II: Model Legislation**

Chapter 5: Model Legislation on Domestic Violence .....	109
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### **Part III: References and Appendices**

References .....	129
Summary of Research Design & Findings .....	139
Countries of the Survey Respondents .....	145
Summary of Recommendations .....	147



## *PREFACE*

In June of 1993 domestic violence catapulted to the fore of the human rights agenda at the World Conference on Human Rights held in Vienna. A new surge in the literature on the subject, coupled with the relentless work of women's rights activists worldwide who mobilized around the issue, helped to focus international governmental attention on a previously shrouded global epidemic.

Now that the issue of domestic violence has been exposed as a human rights violation, the international community must confront not only the sheer magnitude of the problem but also the logistical complications of finding appropriate UN mechanisms to address the issue within the human rights framework. One initiative towards addressing domestic violence was the appointment in 1994 of the UN Special Rapporteur on Violence Against Women by the UN Commission on Human Rights.

Part of the Special Rapporteur's mandate is to "recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences."<sup>1</sup> These recommendations are made in her annual reports to the Commission on Human Rights. This appointment is a tremendous gain for both the human rights community and the global women's movement. The effective use of such an appointment however, requires the support of NGOs from both communities.

Women, Law and Development International (WLD International) (formerly the Institute for Women, Law and

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<sup>1</sup> See UNCHR resolution L. 8/Rev.1, 1994, for full text adopted by the UN Commission on Human Rights.

Development) was eager to support the work of the Special Rapporteur in examining the problem of domestic violence worldwide. Building on its work in the areas of both domestic violence and women's human rights worldwide (*Empowerment and the Law: Strategies of Third World Women*, 1986; *Freedom From Violence*, 1992; *Claiming Our Place: Working the Human Rights System to Women's Advantage*, 1993), Women, Law and Development International launched the Global Women's Legal Status Project. The project's aim is to document and analyze existing legislation and legal strategies to combat violations of women's human rights. The current focus of the Legal Status Project is on domestic violence.

This report also is intended to serve as a resource for both governments and NGOs around the world to use in advocating for specific changes in the treatment of domestic violence within their country's legal system. In addition to outlining the international human rights instruments that support the obligation to adopt domestic violence legislation, the report provides a model for drafting legislation. The report is distinguished by including the direct input of women working in the field of domestic violence worldwide, and as such provides an important vehicle for women's voices to be heard at the highest level of the UN system.

Women, Law and Development hopes that this report will make a contribution to the increasing body of literature on law and domestic violence and serve as a vital resource for both the UN and the broader human rights community.

Margaret A. Schuler  
Executive Director, WLD International  
April, 1996

## *ACKNOWLEDGMENTS*

This report is the product of a collaboration between women's organizations and networks worldwide. We are most grateful to Lori Heise, Kathy Culliton, Radhika Coomaraswamy, Rosa Briceño, Yasmin Tambiah and others who offered invaluable advice on approaching the study and helped launch the research; to Reed Boland and Jane Connors who provided critical source material on legislation in essential countries; to Ariane Brunet, Grace Poore, Cheryl Thomas, Martina Vandenberg, WILDAF, CAFRA, CLADEM, ISIS and other organizations which shared lists of contacts, references and helped distribute our survey; and to the many international respondents who lent their invaluable insight and expertise on domestic violence to this endeavor.

For coordinating the Latin American component of the research and providing institutional support in processing the data from the region, we would like to thank the Gender and Power program of ILSA, (Instituto Latinoamericano de Servicios Legales Alternativos). Special thanks to Amanda Romero, Juliette Bril, Sophie Girardi and Gabrielle Fitchette for translation of the survey and other materials into Spanish, French and Russian. thank you to Charlotte Jones for assisting with the final editing of the report.

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Donna Sullivan, Roberta Clarke, Lori Heise, Anne Tierney Goldstein, and Rhonda Copelon.

We also wish to acknowledge the generous support for this project from the Caritas Fund of the Tides Foundation, the Shaler Adams Foundation, UNIFEM (Brazil and Ecuador), the Ms. Foundation for Women, and the Ford Foundation. We would not have been able to complete this study without their support and confidence in the project.

## INTRODUCTION

### *State Responses to Domestic Violence*

The term "domestic" implies a domain of safety, a private haven from the pressures of the outside world. Yet modern studies suggest that the "cradle of nurture" can equally be a "cradle of violence."<sup>1</sup> Violence within the domestic arena takes many forms. Young boys may be victims of sexual and physical abuse. Elderly family members and the infirm are equally vulnerable and, in some cases, husbands are attacked by their wives. However, the overwhelming majority of victims of violence within the household and in the context of intimate relationships are women and girls. This gendered character of domestic violence reminds us that throughout the

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<sup>1</sup> R.E. Dobash and R. Dobash, "Wives: the appropriate victims of marital violence?" *Victimology*, No. 2, 1978, 426; See *Violence Against Women in the Family*, UN ST/CSDHA/2, Centre for Social Dev. & Hum. Affairs (New York: United Nations, 1989) (hereinafter *Violence Against Women in the Family*), 14.

world women suffer from violence because they are women.

Wives and girlfriends are vulnerable to violence at the hands of men with whom they have or have had emotional and/or sexual links. Young girls suffer nutritional deprivation as families direct available food to their male relatives. Foreign-born domestic workers suffer beatings and rape by their employers. Traditional practices, such as female genital mutilation and dowry-related violence, claim the lives of countless women each year. While all forms of violence within the family are matters of grave concern and demand strategies for their elimination, violence against women and girls requires special attention in any research on intra-family violence because special strategies must be developed to address its unique character.

This study examines domestic violence as a sub-set of gender-based violence against women, which the United Nations Declaration on the Elimination of Violence Against Women (DEVAW)<sup>2</sup> defines as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."

International human rights law can now be interpreted to define domestic violence as a human rights violation and impose upon states an obligation to establish effective legal remedies to eradicate it. Yet effective state level responses are severely lacking as evidenced by the fact that domestic violence remains a problem of epidemic proportions. This epidemic signals the need to review the current legal treatment of domestic violence and engage in the process of its reform.

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<sup>2</sup> Declaration on the Elimination of Violence Against Women, GAOR, 48th Sess., U.N. Doc. A/Res/48/104 (23 Feb. 1994) (hereinafter "DEVAW"), arts. 1, 2.



## Purpose and Research Strategy

*State Responses to Domestic Violence* endeavors to contribute to this process. Specifically, it responds to three major questions: What are states' legal responses to domestic violence?; Have these responses been effective in eradicating domestic violence?; and What can be done to improve states' legal response and treatment of domestic violence?

Responding to such questions required a dual research strategy. A review of the literature revealed that most states continue to address domestic violence through their constitutional provisions and their penal and civil codes. Only a handful of states have enacted, or are currently debating, specific legislation addressing domestic violence. This study analyzed twenty-one pieces of domestic violence legislation<sup>3</sup> with respect to: the individual relationships in which domestic violence is prohibited by law; the acts prohibited by law; the process for making complaints; the options for obtaining immediate protection; the remedies available to victims; and the classification of domestic violence by the legal system.

Evaluating the effectiveness of current legal mechanisms in eradicating domestic violence and identifying initiatives to improve its legal treatment could not be achieved, however, based on legal analysis alone. It required the direct input of individuals and organizations working in the area of domestic violence and, therefore, in the best position to reflect on and recommend systemic legal improvements. This study surveyed 146 women's rights advocates, including lawyers, academics and service providers from 94 states (covering countries or states within federal systems with discrete legislation).

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<sup>3</sup> The legislation of: Australia, Barbados, Bahamas, Belize, Cayman Islands, United Kingdom (proposed law), Ecuador, Guyana (pending), Hong Kong, Malaysia (draft law), St. Vincent and the Grenadines, Puerto Rico, Trinidad and Tobago, Cyprus, South Africa, New Zealand, Argentina, United States of America, Israel, Chile and Peru.

The analysis and recommendations presented in this report incorporate the observations of the survey respondents.

### **Structure of the Report and Key Findings**

The first chapter of this report “Seizing the Strategic Moment” is an updated version of an earlier article that appeared in *Freedom From Violence: Women’s Strategies From Around the World*.<sup>4</sup> It is incorporated into the current study to provide a broader context in which to place legal reform as one among many strategies designed to eradicate gender violence. It reminds us that domestic violence is embedded in cultural, socio-economic and political power relations and therefore, will require not only law reform, but multi-pronged strategies to successfully alter the patterns of behavior that result in violence against women.

Following Chapter 1, which explores strategies, the study commences with an identification of international legal instruments and standards relevant to domestic violence (Chapter 2). The study then reviews selected laws states employ to address domestic violence (Chapter 3) and presents the survey respondents’ evaluation of the current legal treatment of domestic violence and their recommendations for its improvement (Chapter 4). Finally, the study incorporates the conclusions of the research into a model for drafting domestic violence legislation (Chapter 5).

### **Review of International Legal Standards**

The analysis of international human rights law set forth in Chapter 2 demonstrates that many norms and provisions implicate the subject of domestic violence and may be interpreted to require states to both prohibit and prevent domestic violence.

The growing consensus of the international community (as expressed in such interpretative documents as the DEVAW and *General Recommendation No. 19* of the

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<sup>4</sup> Published in 1992, *Women, Law and Development*, OEF International.

UN Committee on the Elimination of Discrimination Against Women) establishes states' explicit obligation to engage in appropriate and effective measures to overcome domestic violence whether committed by private or public actors. Although most countries continue to address domestic violence through general provisions in their civil and penal codes, the increasing application of international human rights law to the issue of domestic violence supports the conclusion that states should adopt and implement comprehensive, gender-specific, domestic violence legislation.

### **Review of National Laws and Mechanism**

A review of constitutional, civil and penal laws from twenty-nine countries demonstrates that while rigorous application of laws could go a long way toward addressing the problem of domestic violence, the structural and substantive limitations of most existing laws supports the need for states to develop and implement gender-specific, comprehensive domestic violence legislation. To ensure effectiveness, legislation must encompass the broad range of definitions and contingencies needed to respond to the unique circumstances surrounding domestic violence.

An analysis of twenty-one domestic violence laws reveals that even what is designated as "domestic violence legislation" often insufficiently protects women. Many of the laws reviewed are geared to protecting members of the family. However, without explicitly prohibiting gender-based violence and naming women as a protected class, they fail to address the pernicious nature of gender abuse and the disproportionate infliction on women of violence in the family. Furthermore, many of these laws only cover limited aspects of domestic violence, and therefore need to be more comprehensive.

### **Recommendations**

Moving the discussion from what the states are presently doing to combat domestic violence to what states should be doing, the study examines the suggestions of

advocates working on domestic violence issues from around the world. Their responses to the survey questions reveal a lack of faith in the current treatment of domestic violence by legal systems. Perhaps not surprisingly, the most frequent recommendation cited is the need to adopt gender-specific, comprehensive domestic violence legislation.

The survey responses also highlight the critical need for domestic violence education and public advocacy, increased services and a coordinated, integrated government strategy in order to effectively combat domestic violence. Analysis of the survey responses shows that advocates are not only concerned with the difficulties that the legal codes present, but also with the lack of services provided by the state to enable women to access legislative protection. The lack of services exemplifies the larger problem, articulated by advocates, of state reluctance to formally acknowledge domestic violence and develop an integrated approach to combating it.

### **Model Legislation**

Having identified deficiencies in the law and needed improvements, the study finally provides a guide for framing legislation that incorporates integral and crucial elements of gender-specific, comprehensive, domestic violence legislation. Its objective is to serve as a drafting guide to states and to organizations committed to enacting such legislation. The model includes a declaration of legislative purpose; definitions of relationships in which domestic violence is prohibited; acts that constitute domestic violence; complaint mechanisms; duties of law enforcement and court officials; and remedies and the provision of services. It also incorporates elements of protocols for police and court personnel.

*PART I*

*GENDER VIOLENCE STRATEGIES:  
FRAMEWORK FOR ACTION*



## CHAPTER 1

### *Seizing the Strategic Moment: Building Gender Violence Strategies*

by  
Margaret Schuler<sup>5</sup>

Gender violence is a pervasive and prevalent problem worldwide, touching all aspects of women's lives—from the home, to the workplace, to the street. Although systematic efforts to understand the nature and global extent of violence against women are relatively recent, activism and theory building on gender violence are in a period of rapid development. Every year, and from every corner of the world, new books and studies appear, conferences are convened, and innovative projects emerge: all aimed at understanding gender violence and advancing strategies to confront its varying manifestations. Because of the dynamic nature

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<sup>5</sup> This essay is an adaptation of the introductory article to *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler, ed. (Washington, D.C.: OEF International, 1992) (hereinafter *Freedom From Violence*). The original paper was entitled "Violence Against Women: An International Perspective."

of this process, the debate among researchers and activists has contributed significantly to a political resolve to formulate workable strategies to eliminate structural violence in women's lives.

### **Developing Strategic Frameworks and Models**

As the pervasiveness of violence against women has unfolded, a sense of urgency in finding effective means to confront violence has also increased. Experiences in confronting gender violence from different cultures and settings have cumulatively contributed to shaping a framework for advocacy work related to gender violence and to defining an initial set of categories and criteria for creating and critiquing strategies.

There are two major sources of inspiration for strategy development. First, strategies commonly develop as concrete responses to urgently perceived needs. For example, establishment of shelters in the U.S. responded to activists' concerns about the battered woman's vulnerability and urgent need for protection. Later, frustrated by the unresponsiveness of the justice system to the battered woman's situation, activists turned toward a structural approach and focused on making the police and the judiciary responsive to the crime wife battery.<sup>6</sup> In India, the Supreme Court's judgment on a specific case in 1979 mobilized the women's movement to initiate a campaign against rape using an approach that targeted various sectors: the media, the parliament, the police, the public. Awareness of the number of recently married women killed by relatives, apparently for delivering insufficient dowry, prompted women organizers to convene mass awareness raising demonstrations; to hold protests against police treatment of these cases; and even to maintain vigils in front of the homes of the victims' in-laws and other alleged perpetrators in specific dowry-murder cases.<sup>7</sup>

The second source of inspiration for strategies are the ideas and models rooted in other contexts and experiences. Many early shelters established in the Third World derived inspiration from European and North American experiences. The practice of the Royal Canadian Mounted Police proved useful in training

<sup>6</sup> See L. Heise and J.R. Chapman, "Reflections on a Movement: The U.S. Battle Against Women Abuse," in *Freedom From Violence*, 257-294.

<sup>7</sup> See G. Kelkar, "Stopping the Violence Against Women: Fifteen Years of Activism in India," in *Freedom From Violence*, 75-100.



Malaysian police in evidence collecting techniques.<sup>8</sup> Recently, the Dutch Police provided similar guidance to Russian police and NGO's working on rape and domestic violence cases. In Africa, female circumcision began to be regarded as an act of violence toward women—and not solely as a health problem—as the result of an ongoing Pan-African dialogue among women about conceptualizing gender violence and about how to approach the practice in the human rights framework.<sup>9</sup>

The dynamic interaction of these two streams of inspiration—perceived exigencies of a particular context and models developed elsewhere—is a thread that runs throughout any discussion of strategies. In assessing the effectiveness of “gender violence strategies,” it becomes clear that those strategies derived from one source alone prove lacking. The use of models as “recipes” without regard to local realities produce inappropriate, incoherent, and therefore risky paradigms, while learning totally from experience is tedious, wasteful, and ineffectual. The mix of external and internal inputs for the design of specific strategies is critical.

Treating the subject of gender violence on an international scale, however, poses a certain challenge. Whether the terms of the dialogue are within a “North/South” or “South/South” framework, learning *from*, not just *about*, the efforts of women in different parts of the world to confront violence requires a special attitude of mind. While wife beating and rape have become recognized as almost universal forms of abuse, other categories and practices such as sati,<sup>10</sup> bride burning,<sup>11</sup> trafficking

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<sup>8</sup> I. Fernandez, “Mobilizing on all Fronts: A Comprehensive Strategy to End Violence Against Women,” in *Freedom From Violence*, 101-120.

<sup>9</sup> See A. Haleem, “Claiming Our Bodies and Our Rights: Exploring Female Circumcision as an Act of Violence,” in *Freedom from Violence*, 141-156.

<sup>10</sup> Sati is a traditional practice in which a widow joins her husband in death by burning herself on his funeral pyre. Outlawed in 1829 in India, the practice has recently been promoted by fundamentalist religious factions as a religious rights protected by the constitutional guarantee of freedom of religion. A celebrated case in 1987 challenged the women's movement in India to organize political and legal responses to this test of its strength. See R. Coomaraswamy, “Of Kali Born: Women, Violence and the Law,” in *Freedom from Violence*, 49-62.

<sup>11</sup> “Bride burning,” “dowry death,” and “dowry murder” are terms used to refer to the murder or suicide of a young wife as the result of harassment by her

in women, female circumcision,<sup>12</sup> female feticide,<sup>13</sup> and infanticide remain associated with particular cultures or regions of the world. Given such distinctive patterns, it is crucial to avoid thinking that there are no lessons to be learned from efforts to combat exotic forms of violence different from those present in one's own reality. Nor is any form of violence so distinctive or so pervasive that experiences from other, presumably more (or less) violent societies, are irrelevant. Only by understanding the common thread that runs through all forms of violence against women in all contexts, can attention to either "ordinary" or "exotic" forms lead to insights about ways to alter the patterns of violence directed toward women. In fact, by any name, and in any culture, abuse of women is the issue—and the causes and consequences are similar.

### Defining the Problem of Gender Violence

At its most basic and obvious level, violence is "an act carried out with the intention or perceived intention of physically hurting another person."<sup>14</sup> Adding the gender dimension to that definition amplifies it to include violent acts perpetrated on women *because they are women*. With this addition, however, the definition is no longer simple or obvious: understanding the phenomenon of violence requires an analysis of the patterns of violence directed toward women and the underlying mechanisms that permit the emergence and perpetuation of these patterns.

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in-laws to produce more income to the family in the form of dowry. Such deaths are often the result of kerosene burns. See Jilani and Kelkar's articles in this volume and the journal *Manushi* (New Delhi) for a further discussion of this issue.

<sup>12</sup>"Female circumcision," the cultural practice of surgically altering female genitalia, is of three types: excision (removal of the prepuce of the clitoris); clitorrectomy (removal of the clitoris) and infibulation (removal of the entire clitoris, labia minora and labia majora). It is still practiced in many parts of the world, particularly in the Middle East and in Africa. See A. Haleem in *Freedom from Violence*.

<sup>13</sup>Female feticide is a term used to designate the selective abortion of the female fetus. It is practiced in those areas of the world where a daughter is considered a liability to a family.

<sup>14</sup>R. J. Gelles and M.S. Straus, "Determinants of Violence in the Family: Toward a Theoretical Integration" in *Contemporary Theories About the Family*, Vol. 1, W.R. Burr, R. Hill, F.I. Nye and I.L. Reiss, eds., (New York: Free Press).

Coomaraswamy<sup>15</sup> points out that women are vulnerable to various forms of violent treatment for several reasons, all based on gender.

1. Because of *being female*, a woman is subject to female circumcision/genital mutilation, female infanticide, and sex-related crimes. This type of violence is rooted in society's construction of female sexuality and its role in social hierarchy.
2. Because of *her relationship to a man*, a woman is vulnerable to domestic violence, sometimes taking culturally related forms such as "dowry" murder and sati. Again, society's concept of a woman as the property and dependent of a male protector, father, husband, son, etc. becomes a powerful justifier of the violence.
3. Because of *the social group to which she belongs*, in times of war, riots, or ethnic, caste, or class violence, a woman may be raped and brutalized as a means of humiliating the community to which she belongs. Male perception of female sexuality and women as the property of men sustains such practices.

Central to this analysis are the issues of power and gender relations. Gender violence is embedded in the context of cultural, socioeconomic, and political power relations. These relations, in which male power dominates, reduce women to economic and emotional dependency, the property of some male protector. Societies organized around gendered, hierarchical power relations give legitimacy to violence against women. In such societies gender violence takes shape not only as physical abuse, but as emotional abuse through threats and reprisals, as exploitation, as discrimination, all of which are rooted in control and coercion.<sup>16</sup>

Based on this analysis, many activists have come to accept as a definition of gender violence "any act involving use of force or coercion with an intent of perpetuating/promoting hierarchical

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<sup>15</sup>Coomaraswamy, in *Freedom from Violence*, 50-51.

<sup>16</sup>For examples, see case studies in *Freedom From Violence*, particularly Kelkar (India), 75-100; Haleem (Sudan), 141-156; Stewart (Zimbabwe), 157-175; Jilani (Pakistan), 63-74; Montañó (Bolivia), 199-212; Gonzalez (Chile), 227-254.

gender relations.”<sup>17</sup> The strength of this definition is that it highlights the role of patriarchy in perpetuating violence, but the breadth of the definition is its limitation. While it is important to identify the causes and consequences of violence, it is equally important to specify the acts that constitute violence. The challenge is to move beyond current, narrow concepts that veil the reality of gender-motivated violence without making the word “violence” so broad it encompasses every violation of women’s rights. To do so would dilute the explanatory power of the term “gender violence.” At the very least, what is needed is a functional term to designate those types of violations that involve violent, coercive force, endangering the life or the physical and psychological integrity of women. The effort to expand the scope of civil rights and human rights in order to incorporate gender violence as a recognizable and functional category has contributed greatly to this end. The Declaration on the Elimination of Violence Against Women (DEVAW)<sup>18</sup> defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

In the quest for effective strategies to combat gender violence, four major types of violence are of particular interest:

- ♦ *Overt Physical abuse* (e.g., battering, sexual assault, at home and in the workplace).
- ♦ *Psychological abuse* (e.g., confinement, forced marriage).
- ♦ *Deprivation of resources needed for physical and psychological well being* (e.g., health care, nutrition, education, means of livelihood).
- ♦ *Commodification of women* (e.g., trafficking, prostitution).

Another useful way to view gender violence is by identifying where the violence toward women occurs. Essentially, violence happens in three contexts—the family, the community, and the state—and at each point key social institutions fulfill critical and

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<sup>17</sup> Asia Pacific Forum on Women, Law and Development, *My Rights: Who Control?* (Malaysia: APWLD, 1990).

<sup>18</sup> *Supra* n. 2, Declaration on the Elimination of Violence Against Women, (hereinafter “DEVAW”), arts. 1&2.

interactive functions in defining, legitimating and maintaining the violence.

- ♦ The *family* socializes its members to accept hierarchical relations expressed in unequal division of labor between the sexes and power over the allocation of resources.
- ♦ The *community* (i.e., social, economic, religious, and cultural institutions) provides the mechanisms for perpetuating male control over women's sexuality, mobility and labor.
- ♦ The *state* legitimizes the proprietary rights of men over women, providing a legal basis to the family and the community to perpetuate these relations. The state does this through the enactment of discriminatory laws and policies or through the discriminatory application of the law.

Taken together, the family, the "community," (as defined above), and the state constitute not only a pervasive and interactive system for legitimizing violence, but the locus of acts of violence as well. The chart on page 17 outlines the manifestations of gender violence using this framework.

### **The Family**

The family is a major site of violence. A female is vulnerable even from before birth as sex determination tests now provide the means to abort selectively the female fetus. During childhood she is often deprived of food and medical care in favor of her male siblings, while her mother is systematically disciplined through beatings to fulfill her domestic duties toward husband and family. Due to a complex interaction of cultural and economic dynamics, played out largely through decisions made in the home against the well-being of females, there are in fact regions in the world where the ratio of women to men is dramatically unbalanced.<sup>19</sup> The incidence of incest and sexual abuse within the family in industrialized countries belies the assumption that advanced economic development is key to reducing unfair treatment of women. Overt control of a woman's sexuality, through either forced pregnancy or forced abortion by the male,

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<sup>19</sup> See A. Sen, "More Than One Hundred Million Women Are Missing," *The New York Review of Books*, December 20, 1990.

is another form of gender violence perpetrated within the family. Finally, emotional abuse is a category that affects countless women: whether through threats of reprisals for failing to conform to expected behavioral norms; through confinement (at times reaching the point of false imprisonment) or through forced marriages, those arranged by the family and carried out without the consent of the "bride." The increased incidence of suicide by women unable to cope with an abusive situation is another facet of the hopelessness resulting from gender violence in the home.<sup>20</sup>

### The Community

Moving to the level of the "community," the social, cultural, religious, ethnic, or racial reference groups from which people derive their sense of identity and key values play a critical role in reinforcing the structure of the family and the position of women within it. Beyond defining gender relations within the ideal family and thereby often setting the stage for female subordination, the social reference group can also perpetrate certain forms of violence. Female circumcision (more accurately described as genital mutilation) occurs not only with the moral support of the cultural community, but by persons regarded as agents of the community, such as local healers or midwives. Witch burning, sati, punishment for extramarital sex—including rape and other forms of physical chastisement—are among additional practices of gender violence perpetrated toward women in the name of preserving ethnic or religious integrity. Finally, rape and punishment of female members of "enemy" groups are forms of gender violence used today in many regions of the world where ethnic conflicts are on the rise.

The workplace, either in the formal or informal sector, is another locus of violence against women. Harassment and sexual coercion are commonly tolerated in factories and offices throughout the world along with other forms of violence that exploit women's vulnerable status in the work force. The informal .

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<sup>20</sup> See Heise, L. "Violence Against Women: The Missing Agenda" in *Women's Health: A Global Perspective*, M.A. Koblinsky, J. Timyan and J. Gay, eds, (Denver: Westview Press, 1992) for a discussion of the problem of suicide.

## Locus and Manifestations of Gender Violence

Locus	The Family	The Community	The State
<p style="text-align: center;"><b>Forms of Gender Violence</b></p> <ul style="list-style-type: none"> <li>● Physical Aggression               <ul style="list-style-type: none"> <li>• Murder ("dowry" / other)</li> <li>• Battering</li> <li>• Genital Mutilation</li> <li>• Foeticide</li> <li>• Infanticide</li> <li>• Deprivation of food</li> <li>• Deprivation of medical care</li> <li>• Reproductive coercion/control</li> </ul> </li> <li>● Sexual Abuse               <ul style="list-style-type: none"> <li>• Rape</li> <li>• Incest</li> </ul> </li> <li>● Emotional Abuse               <ul style="list-style-type: none"> <li>• Confinement</li> <li>• Forced Marriage</li> <li>• Threats of reprisals</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Physical Aggression               <ul style="list-style-type: none"> <li>• Murder ("dowry" / other)</li> <li>• Battering</li> <li>• Genital Mutilation</li> <li>• Foeticide</li> <li>• Infanticide</li> <li>• Deprivation of food</li> <li>• Deprivation of medical care</li> <li>• Reproductive coercion/control</li> </ul> </li> <li>● Sexual Abuse               <ul style="list-style-type: none"> <li>• Rape</li> <li>• Incest</li> </ul> </li> <li>● Emotional Abuse               <ul style="list-style-type: none"> <li>• Confinement</li> <li>• Forced Marriage</li> <li>• Threats of reprisals</li> </ul> </li> </ul>	<p><b>Social Reference Group</b> [Cultural, religious, etc.] <i>Violence directed toward women within or outside the group.</i></p> <ul style="list-style-type: none"> <li>● Physical Abuse               <ul style="list-style-type: none"> <li>• Battery</li> <li>• Physical chastisement</li> <li>• Reproductive coercion/control</li> <li>• Pernicious "traditional" practices (e.g., sati, witch burning).</li> </ul> </li> <li>● Sexual assault               <ul style="list-style-type: none"> <li>• Rape</li> <li>• Harassment</li> </ul> </li> </ul> <p><b>Workplace</b></p> <ul style="list-style-type: none"> <li>● Sexual Aggression               <ul style="list-style-type: none"> <li>• Harassment</li> <li>• Intimidation</li> </ul> </li> <li>● Commercialized Violence               <ul style="list-style-type: none"> <li>• Trafficking</li> <li>• Forced Prostitution</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Political Violence (Policies/Laws)               <ul style="list-style-type: none"> <li>• Illegitimate detention</li> <li>• Forced sterilization</li> <li>• Forced pregnancies</li> <li>• Tolerating gender violence by nonstate agents</li> </ul> </li> <li>● Custodial Violence (Military/Police, etc.)               <ul style="list-style-type: none"> <li>• Rape</li> <li>• Torture</li> </ul> </li> </ul>

Margaret A Schuler



sector places women at risk of violence, due to their isolation and lack of legal protection. Legal guarantees of safety, at least nominally available to formal sector workers, are often totally inaccessible to them. The epitome of workplace violence against women, however, occurs through the commercialization of women's sexuality in organized prostitution and trafficking in women.

### The State

The third location of gender violence is at the level of the state itself. Although state responsibility for the behavior of military officers who violate the human rights of prisoners is firmly ensconced in human rights law and practice, establishing state accountability in gender violence has been elusive. Until recently, most states considered acts of violence toward women to be "private" in nature, carried out by nonstate agents for whose behavior they were not accountable. Rape and torture of women in detention by their custodians is the most obvious situation in which the state can be identified as a direct agent of gender violence. Overt government policies, such as forced sterilization or experimentation on women with unsafe drugs, are also examples of state-sponsored gender violence. Finally, the state's culpability in perpetuating violence through omission, that is, by failing to take appropriate measures to protect vulnerable women, is becoming increasingly evident. Under this concept, the state becomes blameworthy by *not* passing or enforcing appropriate laws and policies to protect women from, for example, battery in the home. The state is also guilty of condoning violence when it accepts the "honor defense"<sup>21</sup> and grants men impunity for violence in cases where they murder their wives or lovers. Thus, the

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<sup>21</sup>The "honor defense" permits a full or partial excuse for homicide or bodily injury inflicted on a woman by her husband (or any direct male relation) who surprises her in the act of illicit sexual relations. The concept still exists in the penal codes of several Middle Eastern and Mediterranean countries and is used even where there are no provisions for and it in law. See L. Moghaizel, "The Arab and Mediterranean World: Legislation Towards Crimes of Honor," in *Empowerment and the Law: Strategies of Third World Women*, M. Schuler, ed. (Washington, D.C.: OEF International, 1986), 174-180. See also Americas Watch. *Criminal Injustice: Violence Against Women in Brazil* (New York: Human Rights Watch, 1991).



state is not just a locus of violence, but under certain circumstances, the perpetrator as well.

The idea of "agency" in the perpetration of gender violence is important, not just at the level of the state, but at other levels also. Violence in the family is not only located in the family, but members of the family carry out the violence. Violence in the community occurs within institutions that are not just the setting for violence, but also the agents of the violence. For example, acts of witch burning, whether in the historical cases of colonial Massachusetts or in the contemporary occurrence in the Indian State of Bihar, do not just happen in the community. Members of the community are the ones who carry out the violent acts. Whether or not the actual perpetrators receive "official" authorization is irrelevant: the Community (religious/political, etc.) provides the justification for their behavior. Similarly, economic enterprises are responsible when—whether by design or by neglect—they permit sexual intimidation of women workers and benefit from the submissive and docile behavior of their female employees.

### **Contextualizing the Framework**

Explaining gender violence in terms of hierarchical gender relations and summarizing its manifestations in schematic form carry certain risks: oversimplifying and universalizing the problem. Violence does not occur in every family or in every culture to the same degree, and the many nuances to the causes of violence in specific cases and contexts must be recognized. Despite that caveat, the framework of unequal gender relations provides a structured way to conceptualize the issues without disregarding additional explanatory categories. There is merit in the thesis that violence is a learned behavior. Similarly, the notions that some subcultures develop more dominant patterns of physical violence than others, and that alcohol and stress resulting from poverty or other causes exacerbate the problem of gender violence, should not be dismissed.

Recent empirical research findings on gender violence validate the use of "unequal gender relations" as an analytical framework and provide additional theoretical insight. One

notable comparative study<sup>22</sup> statistically analyzed ethnographic data on ninety societies throughout the world and found that wife beating was present in seventy-five of the ninety surveyed. Most significantly, it found four cultural factors that taken together become strong predictors of wife abuse including sexual economic inequality, a pattern of using physical violence for conflict resolution, male authority and decision-making in the home, and divorce restrictions for women. The study suggests that women are most vulnerable to violent actions the more total their dependence on men. When their freedom is restricted and they have no options for escape, women are more likely to be abused by their husbands or male authority figures. The most important factors are avoiding conflict, use of a range of techniques to deal with aggressive feelings, basic respect for all members of the community, and most important, absence of a division of labor by gender in the household.

### **Strategies to Combat Gender Violence**

A general framework such as that offered here represents a point of departure and a means of understanding the parameters of a problem, but it is not sufficient as a guide to action. Structuring a strategic response to a problem requires precise understanding of its context and social dynamics, particularly, three critical issues: 1) the social and psychological situation of abused women; 2) the cultural values tolerating violent behavior toward women; and 3) the legal system's position and response to the problem. Accurate definition of these three areas provides clues about where to target strategic action.

**The Victim.** The woman who is raped or sustains abuse in the home or the work place has certain needs that flow directly from the trauma she suffers as a victim of abuse.

- ♦ The battered woman is generally dependent, lacks a sense of freedom and self-confidence, and feels trapped both emotionally and financially in her situation. Powerlessness is a common characteristic of battered women. Both her physical and psychological injuries may require immediate care and she may need legal protection (if available) or

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<sup>22</sup> See D. Levinson, *Family Violence in Cross-Cultural Perspective*, (Newbury Park, CA: SAGE Publications, 1989).

another form of assistance to safeguard her in the short term. Her long-term needs for security require the existence or creation of viable alternatives to her current situation, coupled with the psychological capacity to perceive such options and make choices.

- ♦ The woman who is raped or suffers another form of violence—whether from acquaintances or strangers—also endures physical and psychological wounds requiring immediate attention and support. Hostile and bureaucratic criminal procedures often have the impact of increasing her distress instead of ameliorating it. Shame may prevent her from revealing her anguish and the effect of this may position her in a situation of continuing or greater danger.

***Underlying Values.*** Shared values, which regard women as inferior to men, are the critical factor in shaping abusive behaviors toward women.

- ♦ Traditional values give men proprietary rights over women. In line with a woman's utility as an asset, society highly values virginity in women. Wives are esteemed for their faithfulness to their male protectors and for the productive and reproductive contribution they make to his family. Rape of a woman is regarded as an offense against another male (husband or father). Men are entitled to control the mobility of the women in their charge and to punish the behavior they deem inappropriate.
- ♦ These values (shared by men and women) are functional in all societies to varying degrees. Some communities sanction practices that permit male authority figures to exercise high levels of physical violence over women. Even in those forms of violence against women carried out by other women—usually some family member—the punitive or disciplinary character of the action reflects the need to maintain gender relations based on hierarchy and the superiority of the male.
- ♦ Most societies regard the family as sacrosanct—not to be interfered with by outside individuals or by the state and the affairs of family members as private. Under a regime

of unequal gender relations, women are at a clear disadvantage.

- ♦ Even in societies professing equality of all citizens, traditional values often undermine formal affirmations of equality.

***The Legal System.*** The law plays a critical role in sustaining or changing attitudes and practices related to gender violence. Law plays the dual role of reflecting fundamental social values and defining or shaping them.

- ♦ Laws define rape and other forms of gender violence in accord with society's views about women (traditionally, as subordinate to and the property of men).
- ♦ Enforcement and adjudication of these laws by the justice systems (through the police, prosecutors, and the courts also mirror these values.
- ♦ Because law reflects social values, laws can be changed to create new behavioral norms reflecting new values about women.

All programmatic responses to gender violence address one or all of these areas: 1) the needs of the victims; 2) the social values that justify violent behavior toward women; and 3) the socio-legal system charged with protecting the rights of the innocent and sanctioning the guilty.

## **A Tool for Assessing Strategies**

The enormous complexity of issues and the range of possibilities for action program organizers might take require careful evaluation if they are to assemble an effective design. Because of the theme's complexity, there is a certain risk implied in selecting one among the many legitimate approaches to the systematic conceptualization of strategies. The challenge of proposing a framework for appraising strategies consists precisely in making it comprehensive enough to capture the complexity of the issues, and yet simple enough to be functional as a tool for planning and assessment. Models and tools of this kind are useful only to the degree that they help elucidate the problem and provide guidance in targeting action for change.

Strategies to combat gender violence generally articulate three distinct but interrelated goals: responding directly to the problems caused by the violence; changing values and behavior patterns in individuals and in institutions; and clarifying the causes and nature of the violence in their particular context. This latter goal is a prerequisite for the other two, but can also be a goal in its own right. Strategies also share targets, or subjects, toward which the strategy's goals are directed. These targets include the victim (or potential victims), the "public," state and social institutions, and the legal system. Activities aimed at understanding violence (research) appropriately touch all of these subjects. Activities responding to the concrete effects of violence, and those geared toward changing the way people and institutions behave in the long term, can similarly cover the range of these targets.

Building on these cues, the framework presented here approaches strategies from the perspective of 1) the individuals and institutions the strategy aims to affect (the vertical axis), and 2) the objectives to be achieved (the horizontal axis). The cells of the matrix describe the essential activities a strategy would include at the intersection of the goals and targets. As a point of clarification, the absence of a category designated "political," and of a special niche for "education" in the schematic chart is meant to emphasize the political nature of all strategies and to affirm the necessity of an educational dimension at every point.

### **Subjects and Targets of Strategies**

- ♦ *Victims.* The abused woman is perhaps the most obvious subject to which strategies to combat violence against women are directed. Many strategies make responding to the needs of the violence victims for safety, for redress, and for alternatives to their situation a major priority. Programs with preventive approaches expand the concept of the victim to include potential victims, those who are vulnerable although not yet victims of violence, in addition to already abused women.
- ♦ *The "Public."* Most programs at some level want to influence the "Public," that somewhat amorphous mass of individuals whose ideas and values must be challenged and changed if

social behaviors are to be changed. Awareness raising campaigns through the media and other means of mass communication are the preferred methods for this category of subject.

- ♦ *Institutions.* Since people derive and sustain their values from social interaction, a key strategic target are those institutions, organizations and groups with power to influence social thought and behavior. They include educational institutions such as schools and universities, religious and cultural institutions, and the media. They also include those professions whose members come into contact with violence victims such as religious authorities and the healing professions. Identifying key points of institutional influence is critical to any strategy.
- ♦ *Laws.* This category covers the content of all laws governing any aspect of gender violence. Since laws prescribe behavioral norms, specify measures of acceptable and unacceptable conduct, and delineate rights and sanctions, they provide a vital opportunity to formalize values of respect for women and intolerance of violence toward them.
- ♦ *Law Enforcement Agencies.* Another critical arena for action encompasses the agents of the state charged with enforcing the law: police; prosecutors and judges. The intended effect of even the best laws can be nullified if they are not enforced. Very often the biases of the police lead them to ignore their responsibilities related to gender violence—sometimes to the point of becoming violators and abusers themselves. Thus, a strategic approach aggressively confronts this level of institutional behavior. The final, often indispensable, target of strategic action is the courts. Through their treatment of women, their handling of gender violence cases, and the biases of judges and magistrates in making judicial decisions, they determine patterns of judicial behavior that will be tolerated in cases dealing with women and violence whether or not justice will be served in specific cases. Thus, the police and the court system are significant targets of strategic action.

### Objectives and Goals

The purpose of a strategy is to intervene, that is, to take action for change. Interventions respond directly to the existence of gender violence. They also seek to establish new values and behavioral patterns in order to improve the way society deals with victims and abusers, and ultimately to eliminate violent acts toward women. As a prerequisite for any of these interventions, research provides understanding about the nature and context of violence.

- ♦ *Understanding the violence:* The need for research is a constant factor in all strategies. Without solid data and information, a strategy can only be an intuitive response, a sometimes necessary point of departure, but insufficient as a sole source of information. To move beyond “hit or miss” possibilities for success, organizers must find the means to obtain the needed information. Even before action begins, defining a strategy in any context requires clarity about many issues: What is the extent of the problem? What are the physical and psychological effects on women? What kind of resources are available or needed to confront the distress of abused women or to prevent violence? What opportunities exist for effecting behavioral changes about gender violence at the cultural and structural levels? What about the law as stated and applied? What changes are needed in the law, in institutions? What is the best way to approach the task? What allies or natural constituencies exist to support the strategy? Once action begins, the organization of the strategy itself, its methodology and the results obtained, among other factors, must be systematically assessed to keep it on track. Research and evaluation provide the information and analytical infrastructure upon which to build a particular strategy.
- ♦ *Responding to the violence:* Dealing with the effects of actual violence defines the first and most immediate type of intervention. Included under this category, is provision of services to the victim: hotlines; shelters; rape crisis or other centers that provide legal, psychological, medical assistance. Intervention strategies also deal with the public and with institutional factors that affect the quality of response the .



## Gender Violence Strategies Framework

<b>Research</b>		<b>Interventions</b>	
<i>Understanding the Violence</i>	<i>Responding to the Violence</i>	<i>Attacking the Roots of Violence</i>	
<b>Actual/Potential Victims</b> <ul style="list-style-type: none"> <li>• Document and identify: kind and extent of violence; conditions supporting it; effects on women; what is needed to stop it; appropriate programmatic responses.</li> </ul>	<ul style="list-style-type: none"> <li>• Offer protection to victims (shelter, crisis intervention, etc.)</li> <li>• Provide medical, legal &amp; therapeutic assistance.</li> <li>• Establish support systems.</li> </ul>	<b>EMPOWER women to:</b> <ul style="list-style-type: none"> <li>• Develop a social analysis of violence.</li> <li>• Understand extent/limits of the law.</li> <li>• Create new options by developing skills (self confidence, self defense, employment, political, etc.).</li> <li>• Organize for political action.</li> </ul>	
<b>The "Public"</b> <ul style="list-style-type: none"> <li>• Identify popular beliefs about causes of gender violence; attitudes of tolerance/ acceptance, etc. by men and women.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide information on the prevalence of gender violence in society.</li> <li>• Supply information on available resources/procedures, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Make violence a political issue, relevant to all.</li> </ul>	
<b>Institutions State/NGO</b> <ul style="list-style-type: none"> <li>• Identify influential institutions and groups; their mechanisms for affecting social values and attitudes on gender violence.</li> <li>• Identify cultural and economic practices that facilitate violence.</li> </ul>	<ul style="list-style-type: none"> <li>• Assist institutions (religious, social, etc.) close to victims to provide relevant support.</li> <li>• Collaborate with state agencies to provide adequate services.</li> <li>• Train medical, legal and other personnel to respond adequately to victims' needs/rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Cultivate constituencies and allies in key institutions &amp; groups.</li> <li>• Challenge religious, educational, economic authorities to take action.</li> <li>• Engage them in political action.</li> <li>• Counter negative institutional influences (through education, dialogue, protest, boycott, etc.).</li> </ul>	



<b>Laws/ Policies</b>	<ul style="list-style-type: none"> <li>• Evaluate laws dealing with violence (ideological base, intent, adequacy).</li> <li>• Identify how laws can be improved, expand women's rights, protections and alternatives.</li> <li>• Develop a new legal framework to reflect the concepts of gender violence, alternative sanctions, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Use legal means available to obtain protection or redress.</li> </ul>	<p>At local, national, international levels:</p> <ul style="list-style-type: none"> <li>• Propose more adequate laws.</li> <li>• Introduce new frameworks and arguments.</li> <li>• Mobilize public support through campaigns, protests, etc.</li> <li>• Lobby legislative bodies for passage of new laws, procedures, policies.</li> </ul>
<b>Enforcement Agencies Judges/Prosecutors/Police</b>	<ul style="list-style-type: none"> <li>• Document how the laws are enforced: frequency of reporting; how victims are treated; frequency of prosecutions; biases of police &amp; prosecutors. Identify what is needed to improve enforcement of the law. Document how cases are handled in the courts: number of cases prosecuted; judgments; sentences; biases of judges, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Pressure police to enforce the law, prosecute gender violence crimes and be respectful of victims.</li> <li>• Propose suitable procedures, if needed.</li> <li>• Set up accountability mechanisms.</li> <li>• Identify and use sympathetic courts.</li> <li>• Challenge or confront the courts through legal and political means to comply with the law.</li> </ul>	<ul style="list-style-type: none"> <li>• Educate police and prosecutors to develop new attitudes and skills in dealing with gender violence.</li> <li>• Monitor police handling of violence cases and police behavior.</li> <li>• Elaborate alternative approaches regarding victims and perpetrators.</li> <li>• Make judges aware of their gender biases and cultivate new patterns of judicial behavior.</li> <li>• Use litigation and test cases to improve behavior in the courts.</li> </ul>

Margaret A. Schuler

- ♦ victim will receive. Working with the police, prosecutors, state social service agencies, and the courts all form part of strategies aimed at responding to the actuality of gender violence, whatever its specific form. Response strategies address two principle concerns. The first is with achieving protection for the victim and restraint of the abuser, by whatever means available through the law or otherwise. The second concern is with defining alternative solutions for the survivor that deal with her physical health, her psychological well-being, her economic and social status etc..
- ♦ *Attacking the roots of the violence*: A second type of intervention aims to create a new social ethic related to women and violence. It is both preventive and prescriptive as it seeks to lay down new standards of behavior and new values regarding women. In working with survivors or potential victims, this type of intervention includes activities that empower women to defend themselves by developing new skills and by organizing politically. Work with the public and with key social institutions focuses on breaking the silence about violence and making it a political issue relevant to all, not just to women. A preventive/prescriptive intervention implies cultivating sympathetic allies and constituencies to participate in changing behavioral norms at legal, institutional, and personal levels. Within the legal system, preventive strategies focus on reframing the very basis of the law, in addition to reforming the provision of individual laws. Influencing the police, prosecutors, judges and other actors in the judicial system is an important aspect of prevention since the goal is changing both individual and institutional behaviors and norms.

### **Creating a “Strategic” Response**

Being strategic implies more than a systematic approach to planning and executing a set of organized actions to achieve a specified goal. Being strategic presupposes the presence of several carefully chosen and sharply focused elements. It means having a clear and accurate perspective about the problem and potential approaches in a given context. It means appreciating the relative value of possible goals and methods that could be

selected, and then choosing those with the greatest potential for impact. Once the work begins, it also means maintaining a critical view of every aspect of the strategy (perspective, goals, targets, activities, etc.) and a constant awareness of new implications, complexities, and pitfalls that are guaranteed to emerge in action, and being willing to change with the new challenges. The strategic character is a transitory one: it does not remain without renewal and constant evaluation.

These characteristics have several implications for combating gender violence. At a minimum, designing an effective strategy requires sufficient information to form a clear picture of the aspect of the problem to be attacked, its causes and effects, what needs to be changed, and what can be changed in a given context. The clearer the picture, the more likely the strategy will have an impact. The framework presented here suggests that a strategic approach to gender violence incorporates goals that not only deal with the immediate results of the violence, but aim to eliminate socially sanctioned violent behaviors and values at both individual and institutional levels. The framework also suggests that while appreciating the relative value of all of the targets and all of the goals outlined, a strategic approach to gender violence selects those that are appropriate to the context and contain the greatest possibilities for achieving change.

While a comprehensive design is of undoubted value, the importance of being selective must also be underscored, as it is neither possible nor desirable to tackle every option. Whether, how, and when to take on the judiciary, for example, requires careful consideration. The structure of the legal system, the culture of the judiciary, and substance of the law in a given country will largely determine what can be done with the courts. The possibilities vary widely. Using the courts in Pakistan or Sudan, where religious norms override civil, even constitutional law, will require a different strategy from what might be employed in a secular state. Using the courts to attain redress for a rape victim in a country where the laws governing rape are still patently patriarchal, insensitive and discriminatory is probably a misdirected strategy, and efforts would be better spent elsewhere. Perhaps it would be best in that situation to work on changing the law and hold off using the courts until the legal foundation

for further gains is established. The very nature of the adversarial system precludes the use of litigation in some matters, although in others it may be a valuable strategy. Restrictions on citizen mobilization will impede certain political activities that might be undertaken in more open contexts.

There are also situations in which the limited resources of a group will restrict the strategy it can develop and the issues it can tackle. Sometimes it is important to limit the scope of a strategy by choice; centering on a limited aspect can deepen the understanding of issues and develop new insights about methodologies. There may also be "windows of opportunity" that permit great advances in a short period of time, even though the focus remains on a narrow aspect of the problem. Working on a restricted part of the judicial system at a given moment may be effective, even though such an approach has its limits. Simply put, not every activity can or need be undertaken simultaneously.

The main reason strategies stagnate and lose their vitality or fail to develop at all, however, is that they often center solely on one aspect of the problem or rely on one solution without reference to the total picture. For example, a critique emerged in India of that part of the women's movement that placed too much emphasis on law reform strategies without an appreciation of the other social dynamics underpinning gender violence in India. In Malaysia, the women's movement realized that shelters and crisis centers were not enough without reform of all of the laws dealing with women and violence. In Mexico, some groups working on domestic violence refused to work with government agencies and found themselves overwhelmed and unable to handle the magnitude of services at the scale needed. Thus, the strategic dimension requires incorporating into the response an appreciation of the complexity of the problem.

This affirmation, however, raises another issue. Appreciating the depth and breadth of required changes can be so compelling that organizers try to do too much, and the strategy ends up too broadly conceived and too diluted to be effective in achieving the primary goal. For example, since economic dependence is such a critical factor in violence that occurs in the home, stopping wife battery requires, among other things, improving women's

economic situation. For groups concerned with domestic violence, the dilemma comes in translating this understanding of the problem into action. Should they start an economic enterprise to offer employment to women trapped in the home? Should they focus on women's education or training to provide the basis for independent economic survival? To do so in most cases would channel energies into areas complex in themselves and requiring resources beyond the reach of most groups. In some circumstances, however, the only way to deal with the problem may be by taking on a related, underlying issue that is not directly concerned with violence *per se*. For example, where inheritance or land ownership patterns lead to widow abuse, as is the case in many parts of Africa, changing legal norms, related to land tenure to circumvent the violent behavior may be required—in addition to setting up support groups or “funeral committees” to protect the well-being of the widow. The issue is not whether women's economic vulnerability and the other factors facilitating or perpetuating violence must be addressed: the issue is *how, to what degree, when, and by whom* they should be addressed.

Assembling an effective strategy is a process replete with pitfalls and traps. There are not only strategic targets and strategic goals, but strategic moments. An ineffective design can stem from focusing too narrowly or too broadly on the problem. It can also be the result of attempting to accomplish certain objectives when the circumstances or timing are not optimal. What appears critical in constructing a strategic plan is having a comprehensive view of the needs, together with an appreciation of the contextual possibilities and limitations.

### **Lessons, Issues and Challenges**

The discussion up to this point has focused on identifying the essential elements of a strategy, the targets, goals and actions that can and should be undertaken under optimal circumstances. A theoretical model summarized these elements to provide a point of reference for assembling a strategy. The discussion also emphasized the importance of considering context when framing a strategy, that is, of incorporating into the design the limits and possibilities for action that a context provides. The next section

discusses some of the contemporary debates and new insights on gender violence strategy issues emerging from experience.

### Services

One of the themes that emerges from recent experience is the need for a multi-disciplinary, multi-sectoral approach in responding to the needs of victims. Gonzalez<sup>23</sup> critiques the culture of "experts" which isolates and fragments knowledge to produce a splintered view of the problem of gender violence, alienated from the reality of the victim. By dealing with raped or battered women from their own insulated perspectives, law, medicine, psychology, and sociology end up by providing no solution at all to the victim and, therefore, to the problem.

In response to the insensitivity of the legal and medical professions in dealing with raped or battered women, training law enforcers, medical, and legal personnel who come in contact with victims to understand gender violence, to appreciate the trauma of the victim, and to take proper evidence for criminal proceedings, becomes among other issues, a priority. It is necessary that these professionals respond to the victim's need to be treated with respect. However, experience supports the view that professionals in law and medicine are particularly resistant to learning from anyone outside their specialty. The challenge is for advocates to find ways to crack the rigid shell of superiority surrounding those who have gained entrance to the professional fraternities.

Only an integrated approach in dealing with battered women can overcome the fragmentation of the specialists and re-define the practice of the professions. The multi-disciplinary alternative has lawyers, psychologists, social workers, and others working together to gain a holistic understanding of each particular case and the needs of the individual victim or survivor. Giving attention to the real life context of the battered woman, her hopelessness, dependency, restricted options, and her consequent need for empowerment underpins the approach. The aim is to work with the abused woman to develop her capacity to decide her own future, to formulate her own options and make

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<sup>23</sup> See N. Gonzalez, "A New Concept of Mediation: An Interdisciplinary Approach to Domestic Violence," in *Freedom from Violence*, 227-295.



choices. The professions support this process, but do not control it—a radical departure from the current practice of the liberal professions.

Similarly, making the justice system more “user friendly,” in order to allow the abused woman a measure of control over her own life by recognizing and activating her own legal options to obtain relief or redress requires prosecutors, medical personnel, and others to re-frame their concepts about women and violence. The “professional” issue is a thorny one, however, carrying pressures from within and without to challenge the vision. As the battered women’s movement in the United States gained momentum—a movement that pioneered models for rape crisis centers, shelters, and other services for battered women—the sheer extent of the need required it to “professionalize” its services.<sup>24</sup> Providing efficient services meant getting grants, managing budgets, hiring professional staff, and responding to advisory boards and other bureaucratic structures. The result was a tendency toward an over concern with treating the symptoms of violence rather than dealing with the causes. The enormity of the work demanded by the services themselves, and conditions set for their support, led many programs to lose their creative edge.

The issue of professionalizing services goes hand in hand with the issue of scale; and both have programmatic implications. The need for services increases with the rise in awareness of the problem in public consciousness. Demand for attention escalates as more women realize that crisis centers or shelters provide an immediate response to the distress of their violent experience. The situation of increased demand creates a new dynamic for non-governmental organizations. Since the amount of resources needed go beyond the capacities of most groups and services, they eventually depend on some form of state support or the state takes over the services. Thus, there exists a certain inevitability and utility of state involvement. Analyzing the Mexican experience, Shrader Cox noted in 1992 “government participation ... allow[s] the movement to scale up, providing integrated services to many more women, as well as a large

statistical database, higher visibility, and nation-wide networking."<sup>25</sup>

State involvement sets up its own dynamic, however, and many groups are faced with a dilemma. While state involvement is needed to reach the numbers of women requiring assistance, government involvement can dilute the innovative and transformative character of the service. Its original inspiration and methodology are often lost, partly through bureaucratization and partly through ideological incompatibility. The challenge facing service programs in many parts of the world today is whether they can simultaneously respond to the many and contradictory requirements for such service. Can they be professional and still transform the nature of professionalism? Can they accept government funding, participation and scrutiny and still keep their innovative function in tact?

### The Legal System

Closely linked to service strategies are those strategies involving the legal system in all its aspects ranging from legislative action and law reform, to law enforcement and prosecution.

*Law Reform Strategies.* The inadequacy of legal provisions protecting victims or sanctioning violent perpetrators is often the starting point for work on gender violence. Given the public sphere/private sphere dichotomy underpinning most laws, the legal system has failed to recognize various forms of gender violence as unacceptable social behavior. This fact persuaded many women's movements to focus on criminalizing violence against women and making this the major thrust of their work. In the process of establishing a new legal framework for confronting gender violence, many important gains have been made, but several thorny issues still remain.

In most places, work on gender violence started with the reform of rape laws. Although many of the provisions sought by the women's movement were not incorporated, many of the new rape laws represent important advances in defining rape and attaching sanctions to it. Rape in most countries is considered a crime and is punishable by prison sentence, but few laws entirely

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<sup>25</sup>Shrader-Cox, "Developing Strategies: Efforts to End Violence Against Women in Mexico," in *Freedom From Violence*, 196.



escape being tainted by the ideological frame of reference that still views the crime as being a "sexual" crime, or as an offense against another man or "society," but not as a crime against the victim. Mexico, Malaysia, and India offer examples of important gains made through the reform of rape laws. Changes to the Criminal Procedure Code and the Evidence Act in India incorporated the concept of "absence of consent," placing the burden of proof on the accused in custodial rape cases<sup>26</sup>. Mexico's broadened definition of rape to include other forms of sexual assault besides penetration of the vagina by the penis is another example. However, there are countries where rape laws are not only inadequate, but leave rape victims vulnerable to prosecution themselves.<sup>27</sup> The enforcement of Islamic penal law in both Pakistan and the Sudan effectively deprive women of legal protection. If a woman cannot prove her accusation of rape, she herself can end up being accused of illicit sex, a punishable crime.

In the area of domestic violence, the concept of criminalizing domestic violence takes on a different and more difficult cast. Since domestic violence occurs in the home, the role of law in responding to the problem has historically been open to much debate and experimentation. Despite the current tendency to regard domestic battery as a crime, no different from battery committed in the street, there continues to be concern that the punitive nature of penal law makes it an inadequate and inappropriate instrument for dealing with the problem. What most women want is for the violence to stop, not for their husbands to be sent to jail.

The search for the appropriate ground between punishment and re-education or therapy will most likely continue for some time. Partial clarification has already taken place, however, and a consensus already exists that the law can provide an important escape hatch for women trapped in a violent domestic situation.

Two tendencies in law reform strategies on domestic violence have emerged. One is the creation and use of legal protection orders. The second is legal provision for aggressive or mandatory arrest and prosecution of abusers. There are two

<sup>26</sup> See G. Kelkar in *Freedom From Violence*.

<sup>27</sup> See H. Jilani and A. Haleem in *Freedom From Violence*.

principle advantages of mandatory arrest and prosecution policies for domestic battery. First, it sends a powerful message to the abuser that such behavior will not be tolerated by the law. The deterrent effect of some form of police intervention in most contexts is a useful tool. Second, mandatory arrest and prosecution policies take the burden off the wife in the decision about whether to prosecute. When faced with the responsibility of pressing charges against their mates, many women back out after the immediate danger has passed. The victim's failure to press charges is the excuse many police use for failing to take any action in domestic violence cases, creating a "catch 22" situation.

Under mandatory policies, the decision to prosecute is not left up to the victim but to the state. However, the disadvantage of this approach is that, fearing their husbands will be sent to jail, many women will not even report the battery. The effect is that no intervention or recourse is available to them during or after their emergency.

As many women do not want to prosecute or leave their husbands, civil remedies provide a more satisfactory solution. Protection orders, for example, offer needed and timely safety mechanisms. The effect of the protection order is to remove the threat at the point of danger and allow the woman space to explore her options. It is critical however, that protection orders be available expeditiously and without cumbersome court proceedings. In some places women themselves can file their petitions. Because of the increased economic vulnerability of many women who leave their abusive situations, some jurisdictions are exploring other civil remedies covering rights to domicile and control of economic resources.

An issue of concern to many at a different level of magnitude is the long term social effect of the criminalization strategy. While recognizing the necessity of breaking down the public/private dichotomy as a mechanism preventing women from receiving protection from abuse perpetrated in the family, many fear that increased police authority in that sphere can lead to other abuses. Repression through these means of minority men in the United States is a present danger. Speaking from the Bolivian context, Montaña points out,

When the state and its instruments have penetrated the bedroom only to repress and pillage—such as during dictatorships when their authoritarian and coercive presence through law has been used to legitimize their social regimes—it is quite difficult to debate the problem of domestic violence publicly without appearing to validate their misuse of power.<sup>28</sup>

Despite the danger, as many concur through their actions, the risk is one that must be taken.

In balance, law reform strategies are useful, even essential. Few would deny the necessity of establishing a legal basis for dealing with rape and for reconceptualizing the notion of “sex crimes,” and few would consider the energies spent on reforming laws related to domestic violence as wasted effort. However, expressions of caution about overvaluing law reform strategies are also valid. The new laws in India did not empower women to halt the increasing violence and destruction in their lives and women continue to be judged from the male perspective. Moreover, when the movement was unprepared to respond, laws were reshaped and reinterpreted in terms unfavorable to women, an experience not confined to South Asia. An alarming trend in many areas is the incorporation of particular religious or ethnic standards into civil law, which generally have negative effects on women. The experiences of India, the United States, Malaysia and other countries where fundamentalism is gaining political strength, exemplify how hard-won gains can be dissipated unless there is constant vigilance over the law’s application and interpretation. Legal reform strategies work best, after all, when the social value base is in concordance with the desired new norms. As long as the old regime of values is in effect, the tasks of making the new norms operative, or activating the educative function of law to change values, will be difficult and require action on many fronts.

*Police and Law Enforcement Strategies.* Police failure to provide appropriate response to domestic violence and rape has been a major stumbling block and one of the primary targets for

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<sup>28</sup>J. Montaño, “Long Live the Differences With Equal Rights: A Campaign to End Violence Against Women in Bolivia” in *Freedom from Violence*. 225.

change. Part of the enforcement problem is the inadequate definition of gender crimes and police authority to act.

Another part of the problem is police attitudes about violence against women, which they tend to treat as an inconsequential, private matter. Changing police culture regarding gender violence requires strategies that confront both aspects of this problem. Precise legislation outlining police authority and responsibility addresses the first part. Reeducating the police to eliminate their biases and incorporate a new frame of reference for dealing with gender crimes addresses the second.

Hand in hand with law reform efforts, several countries have initiated direct police training. One tendency is for both training and aggressive or mandatory arrest policies. Another is to change police assumptions about women, rape, and domestic violence and develop police skills in dealing with violence cases. Involving the police in making recommendations for law reform is an additional educational strategy incorporated into some programs. Brazil's answer was to set up "women's police stations,"<sup>29</sup> staffed entirely by women, to handle domestic violence and rape cases primarily.

Managing to engage the police and other government agencies in responding seriously to rape and other crimes of violence against women offer lessons about the importance of educational strategies at the institutional level and requires finesse. Curiously, in both Malaysia<sup>30</sup> and Zimbabwe,<sup>31</sup> it was easier to get to the top levels of the police involved than the police "on the ground," yet the officers present in communities are the ones who come into direct contact with gender violence cases and need the training the most. Winning the police over at the top levels, while necessary, is not enough.

Defining the precise role of the police in dealing with gender violence crimes is still an open and somewhat ragged process. Legislative mandates for behavioral change and educational encouragement for attitudinal change both destabilize the status quo. Challenges to the old ways do not automatically create the

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<sup>29</sup> See Eluf, "A New Approach to Law Enforcement: The special Police Stations in Brazil," in *Freedom From Violence*, 199-212.

<sup>30</sup> See Fernandez in *Freedom From Violence*.

<sup>31</sup> See Stewart in *Freedom From Violence*.

new patterns, and a process of confusing readjustment and redefinition is not uncommon. The adage "a little knowledge can be a dangerous thing" appears to be valid in some cases. After their training in Zimbabwe, police officers began to see themselves as counselors rather than law enforcers, and instead of arresting a wife batterer, would give both wife and batterer some counseling and send them home. At the other extreme, policemen in the United States began arresting both the abuser and the abused out of resistance to mandatory arrest policies.

The problem with educational strategies "within the system" are that they must count on the collaboration of the system to change itself, making this approach a functional strategy only as long as the change does not present too great a threat. Where there is total resistance to change from within, legislating change as a result of political pressure may be the only answer. There may be some places where the political context is such that neither can be effectively used.

Achieving a balance between legislating police behavior and educating police to change their behavior produces a tension in many strategies. Since there are no prescribed means for achieving the needed changes, debate on how to transform police culture is likely to be an issue for some time to come. What is certain is that neither legislation nor education is sufficient as a sole strategy.

*Strategies in the Courts.* Even where the police act responsibly in gender violence cases, the courts have the final say. Unless prosecutors and judges consistently apply an adequate interpretation of the law, gains made in changing laws and in improving police enforcement of them will be diminished, if not entirely negated. If sanctions against certain violations are not enforced, the message to the public is that these crimes are not serious. The challenge to advocates, however, is to determine how to make a difference at the level of the courts and how much energy to expend there.

One strategy often used to change court conduct is to build a new jurisprudence relating to gender violence. Using test cases to introduce new frameworks and new arguments is one way to press the judicial system to alter its treatment of women and its handling of gender violence cases. This approach presupposes,

of course, that the laws provide some basis for victory and, therefore, for influencing court and public behavior. A current issue of public interest in many places is "acquaintance" rape. Using the courts to clarify and reinforce the right of a woman to say "no" to sexual relations and have her word understood as "no" will go a long way in defining both the latitude of socially acceptable sexual behavior and the meaning of rape. It took only a few cases of women courageous enough to take their complaints of forced marriage to court in Sudan<sup>32</sup> to raise awareness about a woman's right to consent, and put parents on notice that they could not simply marry off their daughter without her agreement.

Another technique, which has the dual effect of raising public awareness and getting the court's attention in order to reexamine its practices as well as the content of the law, consists of monitoring court judgments and treatment of women and then publicizing the findings. To avoid getting "bad press" or developing a reputation for not being fair, even the most entrenched patriarchal or bureaucratic institutions can be jolted to a positive response out of pure self interest. While these are only partial and often temporary victories, they allow the movement to get a foothold into institutions normally resistant to change.

On a more direct basis, sensitizing prosecutors and judges to their own personal biases and helping them develop a different framework for dealing with gender issues can be done through more formal educational strategies. In countries where judges are required to keep updated professionally through some form of continuing education program, the inclusion of "gender training" in these programs can have an impact. However, as in the case of the police, the critical factor in this type of reeducation effort is the judges' openness or willingness to change.

Confronting gender bias in the courts is troublesome enough when working with laws that are favorable to women. The task of changing judicial culture is made more difficult in contexts where both legal norms and judges are gender biased. The difficulty intensifies in countries where two, or even three, legal systems operate simultaneously. In some regions, religious and

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<sup>32</sup>See Haleem in *Freedom From Violence*



customary law (or even customs that would not qualify as law) interface with general law in such a way that the resulting confusion severely disadvantages women. Predominantly male judges or magistrates, schooled in traditional mores and perspectives about women, tend to apply the traditional standards in their rulings. Under these circumstances, educational strategies can only go so far and must be accompanied by other measures to challenge court practice.

One important strategy that is beginning to have an impact on court behavior, even at the local level, is the application of international human rights standards to gender violence. Sexual torture and custodial rape are now being addressed as violations of political and civil rights with the force of the international human rights covenants and mechanisms behind them. Activating these mechanisms provides additional support for the difficult task of confronting the maze of intricate issues related to trafficking in women, which up to this point has had little success in using legal remedies.

The principal of state accountability for failing to deal effectively with gender violence (rape and various kinds of violence against women in the home) perpetrated by nonstate actors has only recently been established. It will take many concrete cases addressed from within the human rights framework to consolidate this principle. It will require the activation of mechanisms at the international level to redress violations and establish measures of state accountability for them. The symbolic and formal value of the link with human rights provides a pivotal tool for the battle within the courts, and for raising awareness about the issues of gender violence generally.

### **Leadership anti Mobilizing for Action**

It is evident that while women's concern about the situation of women is what sparks action to combat gender violence, if that goal is to be achieved, strategies must evolve from direct personal responses into organized, broad based political strategies. Building a strategy means building a movement, a highly political task being carried out by women who in many cases are both learning and redefining the meaning of being political in the process of doing it. The small group in a country that first

articulates the need and the theoretical framework for confronting gender violence, can become the force behind mobilizing women's organizations and other allies to challenge the public, the media, state institutions, and the judicial system to respond to their demands. The experiences of Malaysia, Mexico, Bolivia and India highlight the importance of leadership and its dilemma of giving direction to the movement, while simultaneously encouraging democratic participation; of overcoming the tendency to rely on a small group for leadership and action, and failing to develop a base of support at the grassroots.

Strategies to achieve the cultural and structural changes required to stop gender violence must engage a broad base of self-interested support in the political process at various levels. Whether working to confront the specific manifestations of gender violence, or working to change the underlying social values that sustain violence in the home or the institutions that give structure to life, strategies must confront how people view themselves and the way they think things should be. Changing either of these means building a base of individuals who think differently and who are willing to challenge and change what society permits as the norm for behavior toward women. Education and consciousness raising only achieve their purpose when gender violence becomes an issue of vital importance to people's lives. Mobilization can only take place when people are willing to act, and people take action only when something is important to them. The educational process of making gender violence relevant to people essentially does three things: it challenges people at the individual level to reexamine and change their own views and behaviors; it builds a larger pool of people seeking solutions; and it creates a base of political support that functions to pressure for change at the structural level. Thus, the key to success in any strategy, both short and long term, is making gender violence an issue of critical importance to everyone: women; men; the public; institutions; the state.

### **Criteria and Recommendations**

In the final analysis, the purpose of any strategy to combat gender violence is to create a world where women are free from violence—and free from the fear of violence—in the home, in



the street, and in the workplace. In the end, this means confronting the material reality of violence in women's lives, the particular conditions that facilitate its existence, and finally, at the deepest level, the way society organizes its beliefs and its institutions to sustain gender violence. Exploring gender violence from a cross-cultural perspective brings these common threads into sharp relief and permits us to gain some clarity about what needs to be done, despite the fact that the manifestations of gender violence vary from culture to culture and even within cultures.

There are several important lessons about strategies to combat violence against women that have emerged from experience. They are summarized here and offered as tools for planning and evaluating strategy designs and for stimulating further thought and discussion about how to be responsive and effective in creating the world we all desire, a world free from violence against women.

### **General Recommendations and Criteria for Strategy Design**

1. Strategies that get at the root of the problem confront several common issues: a) the effects of the violence in itself; b) the role institutions (legal, social, religious, cultural, economic, etc.) play vis-a-vis the violence; and c) the underlying social values that shape the behaviors and permit gender violence to be part of daily life. Unless all of these issues are addressed, the response can only be partial.
2. In developing strategies for any of these areas, a range of people and institutions must be addressed: the victim herself; potential victims; abusers; institutions that have responsibility to the victim; law making and law enforcing bodies; and institutions that shape social values and behaviors, such as religious, educational, economic and other organizations.
3. All strategies must include research and some form of action or interventions. Research serves to elucidate and document the violence; its nature, source, context, justification, incidence, etc.. Interventions respond to the violence that already exists and attack the roots of the

violence by contributing to building a new ethic-new social and legal norms surrounding violence.

4. Consideration of the social context is critical in shaping a particular strategy, as the needs and possibilities for effective action will vary from situation to situation.
5. A strategy combines these elements to effect change in a given context according to the needs and possibilities for action in the context.
6. The political dimension is present in all strategies, whether serving victims of violence or achieving legislative changes.
7. Strategies that deal with only one part of the problem can still play an important role, as long as they are understood to be partial and part of a larger framework.
8. Strategies that rely solely on the legal system or on education or any other single factor to stop gender violence are doomed to fail.

### **Evaluative Principles for Specific Types of Interventions**

The three most common types of interventions are:

- ♦ Services programs, which address the needs of the victims of violence.
- ♦ Legal or Structural Reform activities, which address the legal system, laws and law enforcement.
- ♦ Public Education programs or campaigns, which address people's values, attitudes and actions related to gender violence. (Education is also part of services and legal reform activities.)

### **Criteria Related to Services**

(Shelters, Rape Crisis Interventions, Counseling, Legal Services)

- ♦ Services include an integrated, multi-disciplinary approach.
- ♦ Services staffs work closely with police, hospitals, courts and other agencies of the legal system.
- ♦ Education is included at all levels.
- ♦ The victims are involved in their own process (psychological, social, legal).

- ♦ Effective services include research and evaluation as ongoing sources of data for analysis and development of new approaches.
- ♦ Support systems for women are integral to the program.
- ♦ The program is fully cognizant of problems associated with shelters and takes care to resolve them, especially: the environment of the shelter; the safety of the others in the house, i.e. the secrecy of the house; and the training of the personnel working with the victims.
- ♦ Services respond (to the degree possible) to the underlying causes and factors facilitating the violence (family structure, economic dependency, lack of alternatives, safety issues in the street and workplace, etc.), and attempt to find solutions to these problems.
- ♦ Programs should try to attain financial independence, but self-financing schemes are not always feasible.
- ♦ Where possible, ancillary government services should be activated to support the program.
- ♦ Since direct government support often places limitations on programs—especially on lobbying for change—effort should be made to maintain autonomy.
- ♦ Donors should be worked with to help find solutions to financial cost of services.

### **Criteria Related to Legal System Reform**

#### *Law Reform (laws and policies)*

- ♦ Constitutional changes are a priority.
- ♦ Alternative legal frameworks, concepts, and arguments for law reform initiatives are formulated to make value base clear and explicit.
- ♦ Law reform is linked to larger issues of social justice.
- ♦ Concepts of punishment reflect values of nonviolence.
- ♦ Both criminal and civil remedies are considered in formulating laws related to domestic violence.
- ♦ Where possible, customary law is used as a source for evaluating and constructing the law.
- ♦ Gender violence legislation is linked to principles of human rights.
- ♦ Law reform initiatives include preventive measures.

- ♦ Law reforms accompany other changes in the system.
- ♦ Law reform is seen as one aspect of the process, not the final victory, and organizers are aware of the trap of being seduced by political victories.

*Law Enforcement (Police, Prosecution, Courts)*

- ♦ Priority targets for law enforcement strategies are those areas of the system that blame the victim (police, judges, etc.) and make them accountable.
- ♦ The work includes education of police and prosecutors to develop new attitudes and methods of dealing with gender violence cases.
- ♦ Monitoring police and court handling of gender violence cases provides a base of information to be used to reinforce positive change and pressure for further change.
- ♦ The same approach (education, monitoring, pressure, etc.) is used with other persons and professions involved with the issues—judges, legislators, lawyers.
- ♦ Litigation is used as a means to improve court behavior and judgments.

**Criteria Related to Public Education and Mobilization**

- ♦ Consciousness raising is part of all strategies (i.e., services, law reform, law enforcement strategies) and aims to make gender violence a public issue.
- ♦ Public education programs popularize the law to make it accessible to women.
- ♦ Content of education on gender violence includes the role of the family and exposes myths about women's inferiority.
- ♦ Providing information is insufficient—people learn when involved actively and when the content is relevant to their lives.
- ♦ Education is systematic and sustained.
- ♦ Research as an educational method is important and should be encouraged.
- ♦ Public education strategies target the educational system and other key institutions.
- ♦ Lawyers and others in the judicial system are targeted for education about violence against women.

- ♦ Educational efforts are evaluated qualitatively and quantitatively.
- ♦ Mobilizing people politically involves: bringing the issue to the public; empowering women to take action; gaining allies and encouraging action by others (previously silent); making issues/demands known through protest and other actions, including:
  - Sit-ins/resistance
  - Boycotts
  - Hunger strikes
  - Demonstrations
  - Court attendance
  - Press releases/conferences
  - Other informal means
- ♦ Organizing mass demonstrations is seen as one, but not the only, form of mobilizing.
- ♦ The victims/survivors are involved in the mobilization.
- ♦ The media are used to call attention to the issue.



*PART II*

*THE STUDY*





## CHAPTER 2

### *International Legal Standards on Domestic Violence*

Until recently, most international human rights instruments were so narrowly interpreted that they did not cover many issues relating to women, in particular domestic violence.<sup>32</sup> A decade ago, governments also were not considered accountable for domestic violence because the perpetrators of domestic violence are private actors and conventional thinking held that states are accountable only for acts by state agents.<sup>33</sup>

Over the years, human rights activists have advocated for, and international bodies have accepted, a broader interpretation of human rights instruments and standards to include state

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<sup>32</sup> See D. Thomas and M. Beasley, "Domestic Violence as a Human Rights Issue," 15 *Hum. Rts. Quarterly* 36, 37 (1993).

<sup>33</sup> I. Brownlie, *Principles of Public International Law*, 4th ed. (Oxford: Clarendon Press, 1990), 435-436.

protection from various gender-specific violations of human rights.<sup>34</sup> In addition, state responsibility, hitherto limited to state action, recently has been expanded to include state inaction and negligence or complicity regarding the acts of private individuals.<sup>35</sup> States are now held accountable for their failure to protect against systematic violations of human rights by private actors.

This chapter analyzes how domestic violence constitutes a violation of international human rights law. It discusses the international human rights norms that require states to investigate, prosecute and punish domestic violence and surveys the international documents and instruments that authoritatively set forth those norms. These sources of international human rights law serve as a foundation for the recommendation to adopt gender-specific, comprehensive domestic violence legislation.

### International Legal Standards

International law governing the area of human rights stems from several main sources: treaties and conventions (both international and regional),<sup>36</sup> *jus cogens* (or customary law), and a

<sup>34</sup> See e.g., *X & Y v. The Netherlands*, 91 Eur. Ct. H.R. (ser. A) (1985); *Cyprus v. Turkey*, Application No. 8007/77, Eur. Comm. of Hum. Rts. [1978] Y. B. Eur. Conv. on Hum. Rts. 100.

<sup>35</sup> See e.g., *Velasquez Case*, Inter-Am. Ct. H.R. (ser. C), No. 4. (Judgment of July 29, 1988).

<sup>36</sup> The international conventions that will be referred herein to include: International Covenant on Civil and Political Rights, Dec. 16, 1966, U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16), 49, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 368 (1967) (hereinafter ICCPR); International Covenant on Economic Social and Cultural Rights, U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) 49, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 360 (1967) (hereinafter ICESCR); Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 23 I.L.M., 1027 (1984) as modified 24 I.L.M. 535 (1985) (hereinafter Torture Convention); Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34 Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (1979) (hereinafter CEDAW). The regional general human rights conventions are: American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, O.E.A./ser S/II.23 (1979) (hereinafter American Convention); African Charter on Human and People's Rights, O.A.U. Doc. CAB/LEG/67/3, Rev. 5, reprinted in 21 I.L.M. 58 (1982) (hereinafter African Charter); and European Convention on the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, entered into force Sept. 3, 1953, 213 U.N.T.S. 222

body of authoritative interpretations and policies. Collectively, all three serve as the primary sources of international law.

Treaties and conventions, which are promulgated by the United Nations (in the case of international treaties or conventions), or by groups of states under the imprimatur of the United Nations (in the case of regional treaties or conventions), are ratified by states. The instruments are binding only on those states which ratify them.

*Jus cogens* is a body of international customary law consisting of norms that are binding on all states whether or not explicitly accepted by them and are derived from the general and consistent practice of states. These norms are often explained and discussed in the decisions of international and regional tribunals.<sup>37</sup>

In addition to these binding sources of international law, the United Nations and its constituent bodies,<sup>38</sup> as well as regional and subject specific organs, such as the Inter-American Court on Human Rights, frequently produce decisions, reports, policy statements, declarations, recommendations or proposals for new standards of behavior by the international community.

While these documents do not impose on states the same formal obligations as may be found in the primary sources of international law, they can serve as authoritative interpretations of those primary instruments. This is particularly the case where the interpretative statement is made by a body charged with overseeing the implementation of the primary instrument. The documents also are an expression of international consensus on a particular issue.

Such growing consensus may eventually lead to the determination of a new binding norm and a consequent state obligation not to violate that norm. In this manner, international law

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(1953) (hereinafter European Convention).

<sup>37</sup>For example, the rule against apartheid is a binding norm that is generally cited as not permitting of derogation, even by states in which apartheid is legal. See e.g., Restatement of the Foreign Relations Law of the United States (Revised) § 702 (1986). Cf. *Anglo-Norwegian Fisheries Case*, 1951 I.C.J., II Pleadings, Oral Arguments, 428-30.

<sup>38</sup>For example, the Commission on Human Rights or the Committee on the Elimination of Discrimination Against Women (hereinafter the CEDAW Committee).

develops to reflect changes in the understanding of and areas of agreement on various issues by the international community.

The issue of domestic violence currently stands at this crossroads between consensus and norm and, with respect to the obligations of states, between exhortation and duty. Although gender-specific violence, including domestic violence,<sup>39</sup> is not explicitly mentioned in any international treaties binding on all states, a number of provisions within international and regional human rights instruments can now be interpreted and are widely understood to prohibit domestic violence and impose a duty on states to take steps to prevent and punish it. Two basic principles of international human rights law underlie the obligation of states to take measures to prevent domestic violence: the prohibition against *state complicity*; and the right to *equal protection*.

### State complicity

Since states must act through individuals, responsibility for the authorized acts of agents of the state (or the unauthorized acts of persons with the apparent authority or condonation of the state) has always been placed to states both through the international human rights instruments<sup>40</sup> and pursuant to *jus cogens*, the international customary law which is binding on all states.<sup>41</sup> Certain international conventions explicitly impose responsibility on states for violations that are inflicted "with...the acquiescence of a public official or other person acting in an official capacity."<sup>42</sup>

In addition to holding states accountable under international law for the acts of their agents (whether or not authorized), states have increasingly been held accountable for a failure to act,

<sup>39</sup> *Supra* p. 4 and App. I for further discussion of definition of domestic violence.

<sup>40</sup> See ICCPR art. 6(1); European Convention art. 2; American Convention art. 4; African Charter art. 4. In addition, many international declarations (which are often used as sources of international customary law) emphasize the importance of the protection of this right. See Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217 A (III), U.N. GAOR, 3rd Sess., U.N. Doc. No. A/810 (1948) (hereinafter UDHR), art. 3; American Declaration on the Rights and Duties of Man, 17, OEA/ser.L/V/II.50, doc., 65 rev. 1, corr. 2 (1970) (hereinafter ADRDM), art. 1.

<sup>41</sup> Report of International Law Commission [1973] 2 Yb.I.L.C. 189; *The Caire claim*, (1929), U.N. Reports of International Arbitral Awards, v. 516, 530; *Spanish Zone of Morocco Claims*, Judge Huber, trans. French text, U.N. Reports of International Arbitral Awards ii, 615, 641. See also Brownlie, 432-457.

<sup>42</sup> Torture Convention, art. 1 (defining what constitutes "torture").

under a principle of complicity. This principle holds that governments should be held accountable under international law for their systematic failures to prevent or punish certain kinds of human rights violations committed by state actors, in particular those involving violence.<sup>43</sup> Because a state's systematic failure to protect its citizens from certain types of violence can amount to an endorsement of that violence, the idea of complicity has been further expanded in more recent years to encompass state accountability for systematic failures to protect people from such human rights violations by private actors.<sup>44</sup> The violence must implicate, however, an international human right that states are required to implement and uphold.<sup>45,46</sup>

Domestic violence obviously implicates a host of rights specified in international law, including certain fundamental rights that states are bound to uphold and protect:<sup>47</sup> the right to equal protection of the law and to be free of discrimination based on one's sex;<sup>48</sup> the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;<sup>49</sup> the right to

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<sup>43</sup> See *Velasquez, Godínez and Fairen and Solís cases*, Inter-Am. Ct. H.R. (ser. C) No. 4 (1988).

<sup>44</sup> See C. Romany, "State Responsibility Goes Private" in *Human Rights of Women: National and International Perspectives*, R. Cook, ed. (Philadelphia: U. Penn Press, 1994) (hereinafter *Human Rights of Women*), 85, 99-101; Thomas and Beasley, 42-43; P. Allott, "State Responsibility and the Unmaking of International Law" 29 *Harv. Int'l L.J.* 1 (1988). See also K. Roth, "Domestic Violence as an International Human Rights Issue" in *Human Rights of Women*, 327, 329-330.

<sup>45</sup> A state's failure to provide protection from violence must involve more than a failure to address "mere violent crime." "States cannot be held directly accountable for violent acts of all private individuals, because *all* violent crime would constitute a human rights violation and international law is not meant to address all crime." Thomas and Beasley, 43.

<sup>46</sup> For a discussion of state responsibility for the violation of women's human rights, see generally, *Human Rights of Women*; R. Cook, "State Responsibility for Violations of Women's Human Rights" 7 *Harv. Hum. Rts. J.*, 125, 166 (1994); Thomas and Beasley, 42-43.

<sup>47</sup> For a discussion of the obligatory nature of these basic human rights, see generally Lauterpacht, *International Law and Human Rights*, 2d ed. (1973), 145-60.

<sup>48</sup> ICCPR, arts. 3, 26. The right to equal protection is discussed later at greater length.

<sup>49</sup> Torture Convention; ICCPR art. 7. See also European Convention, art. 3 ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment."); African Charter arts. 4, 5; UDHR art. 5.

life and physical integrity;<sup>50</sup> the right to equality in the family;<sup>51</sup> and, the right to the highest standard attainable of physical and mental health.<sup>52</sup> Most acts of domestic violence consist of some form of physical assault (which may rise to the level of torture<sup>53</sup>) and thus violate a woman's physical integrity.<sup>54</sup> Many women worldwide have been killed by their spouses, partners or relatives, either as the culmination of a pattern of increasing physical abuse, in response to a perceived violation by a woman of the abuser's "honor"<sup>55</sup> and as a result of traditional and customary practices such as sati and dowry exchange.<sup>56</sup> The repetition of severe physical and mental assaults can lead to long-term pain and permanently compromise a woman's psychological and physical health.<sup>57</sup>

<sup>50</sup> ICCPR arts. 6(1), 7. See also UDHR art. 3; American Convention art. 5(1) (a person's right to "have his physical, mental and moral integrity respected").

<sup>51</sup> The ICCPR provides in art. 23 that "state parties to the present covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution..." Article 16 of CEDAW contains provisions relating to marriage and family relations under which states must ensure the removal of discrimination against women. Other regional and general human rights conventions have similar provisions. See ICESCR art. 10; UDHR art. 16; European Convention art. 12; American Convention art. 17; African Charter art. 18.

<sup>52</sup> ICCPR, art. 12(1) ("State parties to the present Covenant recognize the right to everyone to the enjoyment of the highest attainable standard of physical and mental health."). See also African Charter, art. 16; ICESCR art. 12; CEDAW art. 12; UDHR art. 25.

<sup>53</sup> For a discussion on domestic violence as torture, see R. Copelon, "Intimate Terror: Understanding Domestic Violence as Torture" in *Human Rights of Women*, 116-152. Cf. D. Blatt, "Recognizing Rape as a Method of Torture" 19 *N.Y.U. Rev. L. & Soc. Change* (Winter 1992).

<sup>54</sup> *Supra* n.1, see *Violence Against Women in the Family*, 13-14. See generally, H. Warzazi, *Report of the Second U.N. Regional Seminar on Traditional Practices Affecting Women and Children*, Colombo 4-8 July 1994, U.N. Doc. ECN. 4/sub.2 (28 July 1994 & Cor.1, 3 August 1994) (hereinafter *Regional Practices Report*); N. Toubia, *Female Genital Mutilation, Call for Global Action*, (1993) (hereinafter *FGM Report*), 13-19; *Harmful Traditional Practices Affecting the Health of Women and Children*, Human Rights Series, Fact Sheet No. 23 (United Nations, Geneva, August 1995) (hereinafter *Traditional Practices Fact Sheet*), 7-12.

<sup>55</sup> See Americas Watch, *Criminal Injustice: Violence Against Women in Brazil* (New York: Human Rights Watch, 1991).

<sup>56</sup> *Supra* n.7, see e.g., G. Kelkar in *Freedom from Violence*.

<sup>57</sup> See generally, H. Warzazi, *Regional Practices Report*; N. Toubia, *FGM Report*; *Traditional Practices Fact Sheet*. Moreover, a woman's enjoyment of liberty and

### International Legal Standards Protecting:

Right to Life	Right to Mental and Physical Integrity	Right to Freedom from Torture	Right to Physical and Mental Health	Right to Equal Protection of the Law	Right to Equality in the Family
ICCPR article 6 (1)	European Convention article 3 ICCPR article 7	European Convention article 3	ICCPR articles 12(1)	ICCPR articles 2(1), 3, 14, 26	ICCPR article 23
European Convention article 2	Africa Charter articles 4 and 5	Africa Charter articles 4 and 5	African Charter article 16	ICESCR articles 2(2), 3	ICESCR article UDHR article 16
Africa Charter article 4 UDHR article 3 ADRDM article 1	Torture Convention UDHR article 5 American convention article 5 (1)	Torture Convention UDHR article 5 American convention article 5(1) ICCPR article 7	ICESCR article 12 UDHR article 25 CEDAW article 12	CEDAW articles 1, 2, 3, 4, 15 European Convention article 14 American Convention article 1, 24 Africa Charter articles 2, 3, 18(3), 19 UDHR articles 1, 2, 7 ADRDM articles 2, 12	CEDAW article 16 European Convention article 12 American Convention article 17 African Charter article 18

security is circumscribed when she lives in fear of a perpetrator of violence, or when her actions are constrained by fear of domestic violence; often in situations of domestic violence, women can be physically confined to their home or environment by the perpetrator. *See The World's Women, 1970-1990: Trends and Statistics*, UN Doc. ST/ESA/STAT/SER.K/8 (New York: United Nations, 1991), 6-19. *Supra* n.5, *see generally Freedom From Violence*.



The overwhelming factual evidence documented by the women's community, and increasingly by human rights activists,<sup>58</sup> over the past two decades leaves no doubt that acts of domestic violence constitute severe violations of women's basic human rights. It is the severity of these violations, coupled with an insufficient and often complete lack of response on the part of states, that so powerfully attests to the complicity of states in the perpetuation of domestic violence and elevates the level of states' responsibility to combat domestic violence to an international concern.

### Equal Protection

States have an independent obligation to make sure that women enjoy the equal protection of laws. International human rights law binding on states requires states to provide equal protection to men and women in the enjoyment of rights.<sup>59</sup> The ICCPR provides that, "the law [of states parties] shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, color, [or] sex...." Equal protection requires states to ensure that violence perpetrated in the home or in the context of intimate relations receives *as thorough* an investigation and *as vigorous* a prosecution as violence perpetrated in the street by strangers. If discriminatory attitudes in law enforcement systematically deny women access to the courts for protection of their rights, then women have been denied equal protection of the law. This denial of equal protection is a human rights violation for which the state is responsible, separate from any responsibility the state may have for the violence experienced by women under a theory of state complicity.<sup>60</sup>

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<sup>58</sup> See e.g., *Combatting Violence Against Women*, C. Norchi ed. (New York: Int'l. League for Human Rts., 1993). G. Kelkar, 79-82; *Double Jeopardy: Police Abuse of Women in Pakistan* (New York: Human Rights Watch, 1992); *Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait* (New York: Human Rights Watch, 1992); *Women in the Front Line*, AI Index: ACT 77/01/91 (Amnesty International, March 1991).

<sup>59</sup> See ICCPR arts. 3, 26; ICESCR arts. 2(2), 3; CEDAW arts. 1, 2, 3, 4, 15; European Convention art. 14; American Convention arts. 1, 14; African Charter arts. 2, 3, 18(3), 19; See also UDHR arts. 1, 2, 7; ADRDM arts. 2, 12.

<sup>60</sup> See Roth, 333.



The preliminary report of the Special Rapporteur on Violence Against Women discusses violence against women as it relates to the question of equal protection of the law.<sup>61</sup> The report asserts that in domestic violence situations women are frequently denied equal protection of the law either because the law does not recognize domestic violence as a human right or as a violation of the law or because the violations against women are not prosecuted. In either situation, an offending country is in breach of its international obligation to ensure equal protection of the law to all its citizens and must take steps to remedy that breach.

### **Authoritative Interpretations of International Law**

There are authoritative expressions of consensus and interpretations of international law and standards that specifically address, and provide guidance about, domestic violence: the *Declaration on the Elimination of Violence Against Women*,<sup>62</sup> and *CEDAW's General Recommendation No. 19*.<sup>63</sup> In addition, certain states have begun to address the issue of domestic violence at the regional level, as evidenced in the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*.<sup>64</sup> While not explicitly binding on all states,<sup>65</sup> these documents express the

<sup>61</sup> See e.g., Preliminary Report submitted by the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1995/42 (22 November 1994) (hereinafter Special Rapporteur's First Report), n.6, para. 105.

<sup>62</sup> *Supra* n. 2.

<sup>63</sup> U.N. Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), 11th Sess., U.N. Doc. CEDAW/c/1992/L/1/Add. 15 (1992) (hereinafter General Recommendation No. 19).

<sup>64</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, OEA/ser.L/IL/7.4, CIM/doc. (1992) (hereinafter Inter-American Convention). The countries in the Inter-American system (which includes North, South and Central American and the Caribbean) that have ratified the Convention as of March 1995 include: Venezuela, Bolivia, Bahamas, Barbados, Costa Rica, Dominican Republic, Guatemala, Honduras, Panama, St. Kitts and Nevis, and St. Lucia. Other countries have signed the convention but have not ratified it as of March 1995. They include: Argentina, Brazil, Chile, Dominican Republic, Ecuador, El Salvador, Guyana, Mexico, Nicaragua, Peru, and Uruguay.

<sup>65</sup> General Recommendation No. 19 in particular is probably most expansively viewed as an authoritative interpretation of CEDAW, which itself is only binding on states that have formally ratified it.

growing international consensus that states have the duty not to be complicit in the commission of domestic violence and to extend the protection of national laws to protect women from it.

### **Declaration on the Elimination of Violence Against Women**

DEVAW, adopted in 1994, is a comprehensive statement of international consensus on the protection of women from violence and the first set of international standards on violence against women, including domestic violence, officially issued. The preamble to the declaration acknowledges that violence against women constitutes a violation of their rights and fundamental freedoms and impairs their enjoyment of those rights and freedoms. DEVAW also acknowledges violence against women as a manifestation of historic inequality between men and women. It also reinforces the idea that women have the right to the full enjoyment of all human rights, and that necessary to that enjoyment is freedom from of domestic violence.

Article 4 of DEVAW exhorts states to condemn violence against women without invoking custom, tradition or religion to avoid that obligation, and to pursue by all appropriate means, and without delay, a policy of elimination of violence against women. Among numerous specific acts, states are asked to ratify CEDAW and to:

develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; provide... access to the mechanisms of justice and, ... by national legislation, to just and effective remedies... ..inform women of their rights in seeking redress... develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions.<sup>66</sup>

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<sup>66</sup>DEVAW art. 4. Other provisions call on states to train and sensitize law enforcement officers to make them more responsive to victims, (art. 4(i)), adopt measures to change the social and cultural pattern of men and women, (art.4(j)), and collect data and compile statistics on domestic violence, (art.

### **CEDAW General Recommendation No. 19**

CEDAW's General Recommendation No. 19 also deals exclusively with the issue of violence against women. Generally, the Committee recommends that states should take every legal measure necessary to protect women from all forms of abuse including domestic violence. It specifically asserts that gender-based violence is a human rights violation that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.<sup>67</sup>

Furthermore, it holds states responsible for redressing private acts of domestic violence and asks states to acknowledge this in reviewing their laws and policies.<sup>68</sup> It urges states to take appropriate and effective measures to overcome all forms of gender-based violence whether private or public,<sup>69</sup> including adopting legislation embodying criminal and civil remedies that would remove the defense of honor in the assault or murder of a female family member.<sup>70</sup> States are also urged to report on the extent of domestic violence in their country and on the preventive, punitive and remedial measures in place to deal with such violence

### **Inter-American Convention on Violence Against Women**

The Inter-American Convention is the first regional treaty on violence against women. It defines domestic violence as:

physical, sexual and psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including among others, rape, battery and sexual abuse.<sup>71</sup>

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(4(k)).

<sup>67</sup>General Recommendation No. 19, paras. 1, 6, 7.

<sup>68</sup>*Id.* para. 10.

<sup>69</sup>*Id.* para. 11.

<sup>70</sup>*Id.* paras. 31, 32.

<sup>71</sup>Inter-American Convention, art. 2(a).

General Rec. No. 19	DEVAW	Inter-American Convention
<p>Violence against women violates women's fundamental rights and freedoms;</p> <ul style="list-style-type: none"> <li>• States are obligated to:</li> <li>• condemn violence against women without invoking custom and tradition;</li> <li>• Develop domestic legislation to punish and redress wrongs to women;</li> <li>• Develop preventative approaches to protect women from violence;</li> <li>• Assist victims of violence;</li> <li>• Train and sensitize law enforcement officials;</li> <li>• Affect changes to social and cultural patterns;</li> <li>• Collect data and compile statistics.</li> </ul>	<p>Gender based violence is a human rights violation;</p> <ul style="list-style-type: none"> <li>• States responsible for redressing private acts of violence;</li> <li>• Remedies include:</li> <li>• civil and criminal legislation</li> <li>• removal of honor defense</li> <li>• monitoring the extent of domestic violence</li> <li>• increased legal measures to protect women from all forms of abuse.</li> </ul>	<ul style="list-style-type: none"> <li>• Protects women from public and private violence;</li> <li>• Urges member states to condemn violence against women;</li> <li>• Take all measures to prevent, punish, eradicate violence;</li> <li>• Individual NGOs can lodge complaints with Inter-American Commission on Human Rights for breach;</li> <li>• States, commissions can seek advisory opinion with Inter-American Court of Human Rights;</li> <li>• States obliged to list measures to implement convention in national reports to Inter-American Commission of Women.</li> </ul>

The Convention provides protections for women from both public and private acts of violence.<sup>72</sup> Article 7 imposes duties on member states to the Convention to condemn violence against women and to use all appropriate means to promptly prevent, punish and eradicate it.<sup>73</sup> This requires countries to adopt appropriate legislation, provide support services and educate the public and law enforcement agents on the issue.

Most importantly, the Convention sets up a mechanism for protecting the rights articulated therein.<sup>74</sup> Individuals and non-governmental entities can lodge complaints with the Inter-American Commission of Human Rights for breach or non-observance by states of article 7 of the Convention. Both states and the Commission can seek an advisory opinion on the interpretation of the Convention with the Inter-American Court of Human Rights. States also are to provide information in their

<sup>72</sup>*Id.* art. 3.

<sup>73</sup>*Id.* art. 7.

<sup>74</sup>*Id.* Chapter IV.

national reports to the Inter-American Commission on Women on measures taken to implement the Convention. These mechanisms make the Convention a particularly important document in combating domestic violence.

Like DEVAW, the Convention in its preamble, also clearly recognizes that one of the fundamental causes of violence against women is the historic unequal power relations between men and women. The explicit recognition of inequality as it relates to violence against women contributes to efforts to establish critical links between national efforts to combat violence against women and national efforts to eliminate discrimination and improve the status of women.

Taken together, DEVAW, General Recommendation No. 19 and the Inter-American Convention reflect the growing concern and awareness of states about domestic violence, its shattering effects and, to date, the inadequate responses that have been made by states and the international community as a whole. These expressions of consensus and concern reveal the tremendous need for broad-based schemes to prevent and punish domestic violence effectively.



## CHAPTER 3

### *National Laws and Mechanisms to Address Domestic Violence*

Historically, if states addressed domestic violence at all, they did so by interpreting provisions of existing constitutional, penal and civil laws. In response to growing awareness about the complexity of domestic violence and the inadequacy of existing laws, states began to modify these laws, incorporating additional provisions to address the unique character of domestic violence. Today most states follow this approach.

Over time, the inefficiency of this piecemeal approach led to a more recent trend in some countries toward passage of specific domestic violence legislation that provides a more holistic approach towards the issue. Moreover, international instruments furthered this trend by calling upon states to adopt specific violence legislation. Only a handful of countries, however, have adopted such legislation.

The first part of this chapter gives examples of how states have modified constitutions and penal and civil laws with regard

to domestic violence. This part shows how—due to the separate nature of civil and penal legal structures—isolated legal changes in each structure do not adequately provide the full range of remedies needed to respond effectively to domestic violence.

The second part of this section reviews legislation created to address domestic violence enacted or pending in twenty-one countries. The review looks at six key dimensions: 1) definitions of relationships covered by the legislation; 2) the definitions of the types of domestic violence; 3) the processes for making complaints; 4) the mechanisms for giving victims immediate protection; 5) the remedies for victims; and 6) the punishment for perpetrators.

Analysis of this approach shows that laws geared specifically toward domestic violence represent a positive step towards an integrated, comprehensive approach to combatting domestic violence. Those groups and individuals who were instrumental in bringing about domestic violence laws in their countries have made important contributions to the advancement of human rights in their country and worldwide. However, there is still further to progress. Domestic violence legislation needs to be gender-specific, more comprehensive, and more systematically integrated to be truly effective for women.

### **Constitutional Provisions**

As a fundamental source of law, constitutions set a national principle to which the state can be held accountable and lay an important foundation for additional legislative strategies to combat all forms of violence against women. Brazil was among the first countries in Latin America to include an article on domestic violence in its constitution. Article 226 asserts that the family is the basis of society and will have the special protection of the state. It provides that the state will create mechanisms to prohibit violence within familial relationships.<sup>75</sup> Colombia's constitution establishes that violence in the family is destructive to the harmony and unity of the family and will therefore be penalized by law.<sup>76</sup>

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<sup>75</sup>Constitution of Brazil (1988), art. 226.

<sup>76</sup>Constitution of Colombia (1991), art. 42(5).



Some constitutions however, address only certain aspects of domestic violence. For example, the constitution of Ethiopia guarantees women the right to protection by the state from harmful customs, and prohibits laws, customs and practices that oppress women or cause them bodily or mental harm.<sup>77</sup> While these provisions are important, they encompass only a limited definition of domestic violence and thus leave many women without protection and redress.

Other constitutional provisions address the negative treatment of women but do not specifically address domestic violence. For example, in Vietnam, the constitution strictly forbids all acts of discrimination against female citizens including those that violate or degrade their dignity.<sup>78</sup> Similarly, in Uganda, the currently debated constitution outlaws degrading treatment of women and provides for equality within the family.

Some constitutions contain amendments such as those prohibiting divorce or separation, which can actually impede the creation of legal responses that appropriately address domestic violence.

Most constitutions, however, contain general provisions that do not specifically address domestic violence but can be interpreted to guarantee the right to freedom from domestic violence. These provisions include the rights of freedom from torture;<sup>79</sup> inhuman or degrading treatment;<sup>80</sup> and gender discrimination.<sup>81</sup> In addition, constitutions may guarantee: equality to both sexes;<sup>82</sup> the right to dignity;<sup>83</sup> freedom, and security of person;<sup>84</sup> the right to protection from violence;<sup>85</sup> the right to integrity of the body;<sup>86</sup> and the right to life, liberty and the pursuit of happiness. These general provisions can be useful if they are interpreted to apply

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<sup>77</sup> Constitution of Ethiopia (1994), art. 35/4.

<sup>78</sup> Constitution of Vietnam (1980), sec. 63.

<sup>79</sup> See Constitution of Bangladesh (1992), art. 35(4).

<sup>80</sup> See Constitution of Nigeria (1979), sec. 31.

<sup>81</sup> See Constitution of India (1951), art. 15.

<sup>82</sup> See Constitution of Nigeria (1979), sec. 39.

<sup>83</sup> Interim Constitution of South Africa (1994), sec. 10.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*; see also Constitution of Cambodia (1993).

<sup>86</sup> Constitution of the Netherlands (1850), art. 11.

to women and if the linkages between these basic rights and the domestic violence are established and reinforced.

### Penal Laws and Procedures

Domestic violence in many countries often falls under penal laws, particularly assault and battery provisions. Penal laws and penal legal mechanisms provide punitive measures such as imprisonment and fines that may serve as deterrents to perpetrators of domestic violence and limit their ability to move freely in society.

Some countries have amended and expanded their penal laws to provide penalties for certain types of cultural practices that constitute violence to women in the family. For example, in India "dowry deaths"<sup>87</sup> are now a crime.<sup>88</sup> India has passed laws to include imprisonment among the penalties for giving and receiving dowries.<sup>89</sup> Ghana and England have criminalized the practice of female circumcision.<sup>90</sup>

Other countries have amended their penal laws to include violence between spouses and violence involving children, minors and relatives<sup>91</sup> or to increase the penalties for such violence.<sup>92</sup> For example, both Spain and Peru amended their penal codes to include penalties for mistreating spouses.<sup>93</sup> In these,

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<sup>87</sup> "Dowry Death" is a popular designation for the murder of a woman by her husband, husbands' parents or his relatives during the initial years of her marriage, usually as retaliation for their unfulfilled demands to her relatives for increased dowry payments.

<sup>88</sup> Penal Code, 304 - B (India).

<sup>89</sup> Dowry Prohibition Protection (Amendment) Act, 1986 (India).

<sup>90</sup> Act 484 *Criminal Code* (Amendment) Act, 1994 (Ghana); Prohibition of Female Circumcision Act, 1985 (England).

<sup>91</sup> *Criminal Code*, 1986 (Vietnam). See also Penal Laws (Amendment No. 26) 5749-1989 (Israel) (It prohibits battery against minors and those the state defines as helpless. It creates an offense of aggravated battery when the offense is committed by a relative); *Code Penal* (Ordinance No. 83 - 162) (Mauritania) (which prohibits crimes against children and the family).

<sup>92</sup> See e.g., Cruelty to Women (Deterrent Punishment) Act (Amendment Act) No. 37 of 1988 (Bangladesh). The law was amended to increase penalties under the parent ordinance and to penalize attempted offenses under the ordinance.

<sup>93</sup> See Penal Code, 4 March 1991 (Peru); Penal Code (Bolivia), art. 276 ("no form of sanction will be applied when injuries have been slight and caused by conjugal partners."). See also Organic Act No. 3/1989 of 21 June 1989 (Spain)

however, as in most penal provisions, the gender-specific nature of the violation is not taken into account.

Some countries have even used amendments to their penal codes as means of expanding access to the legal system. France has made amendments to its Penal Code and Code of Criminal Procedure to allow associations that fight domestic violence to bring forth complaints.<sup>94</sup>

While all of these modifications and amendments make some progress in the fight to redress domestic violence, they also illustrate the limited scope of penal laws and amendments to them. Individual amendments neither satisfy the range of needs of domestic violence cases nor address the gender-specific nature of this violence.

Amendments to individual penal laws often do not account for discrimination in other penal provisions or the overall discrimination against women in the legal system. For example, while some countries have recently adopted provisions that criminalize and/or repeal immunity from marital rape,<sup>95</sup> the penal codes of others such as Ecuador and Bolivia<sup>96</sup> also contain exceptions that prohibit certain complaints between husbands and wives.

With the exception of exemptions and immunity provisions, many penal laws do not account for the nature of the relationship between the involved parties in situations of violence. As such, there are few areas within the penal system to respond to the victim's need for protection and to protect against recidivism. Domestic violence is a cyclical epidemic that relies on continued

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<sup>94</sup> Act No. 90-602, 12 July 1990 (France). Organizations working to combat sexual violence already had this option.

<sup>95</sup> See provisions in the following countries' laws that criminalize marital rape: Criminal Code, s. 238 (1950) (Czechoslovakia); Criminal Code, art. 204 (1932) (Poland); Criminal Code, sec. 216-18 (1960) (Denmark); Penal Code 1902, s. 222 (Norway); Criminal Code. Ch. 6, s.1 (Sweden); New Offenses Act, 1986, s.6 (Trinidad and Tobago); Crimes Amendment Act (No. 3) 1985, s.2 (New Zealand); Criminal Code, s.246.8 (Canada); Forte (1983) 99 L.Q.R. 513 (Scotland). Most Australian states and states in the U.S. have made marital rape a crime.

<sup>96</sup> See Penal Procedure Code, arts. 28, 35, 108 (Ecuador). See also p.85 regarding recently passed domestic violence legislation in Ecuador which endeavors to amend this problem, thus supporting the concept of gender-specific, comprehensive domestic violence legislation.

interaction between the victim and the perpetrator. Often the penal system does nothing more than free the perpetrator to commit further violent acts that often are retaliatory and more severe. Punishment under penal laws for perpetrators of domestic violence is often mild in comparison to similar violence between strangers, despite the breach of trust present in violence between family members or intimates.

The nature of penal redress also demands that police and other officials cooperate in the court process. Domestic violence cases come under the control of the law enforcement officials, prosecutors and the courts once a report has been made. Police response to domestic violence cases is frequently inadequate and often hostile,<sup>97</sup> and prosecutors and courts often make it difficult or fail to effectively prosecute cases. For example, in Trinidad and Tobago, marital rape can only be prosecuted at the insistence of the Director of Public Prosecutions. Thus, victims not only have little control over the punishment issued but also lack input into the handling of the process or the speed at which it is pursued.

Furthermore, the evidentiary standards for penal laws, such as general assault and battery provisions, fail to recognize the particular circumstances of domestic violence. Domestic violence usually takes place in seclusion over an extended period of time. Injuries are frequently not properly recognized and documented by medical and law enforcement officials. Standards of corroboration ignore the unique character of this type of abuse. Arbitrary regulations on the nature of domestic violence injuries frequently prevent women from accessing critical remedies.

Penal laws also fail to address the fact that domestic violence takes place between individuals who are often economically dependent upon one another. By failing to provide financial assistance to victims and their families, penal codes inhibit their effective usage as some female victims may be reluctant to send their abusers, upon whom they may be financially dependent, to jail for an extended period of time.

In addition, penal laws do not reflect the fact that victims may choose to preserve family relations. Under penal codes, there is little flexibility with regard to punishment. Victims may

<sup>97</sup> *Supra* n. 1, *Violence Against Women in the Family*, 56.

view the penalties as too extreme to pursue against a family member.

### **Civil Laws and Procedures**

In most common law jurisdictions, assault and battery, in addition to being crimes punishable under penal codes, also constitute tortious offenses which also can be treated by civil laws. Under civil law there are varied remedies available to victims, including, compensation, damages, injunctions, separation and divorce. For example, in South Africa, women may obtain a maintenance order through the courts which provides child support and reimbursement for medical expenses.<sup>98</sup> While penal procedures predetermine the punishment, in civil procedures, the victim may be able to influence the level and type of redress she chooses to pursue.

As a matter of social policy, however, the use of the civil codes detracts from the criminality of the acts. In addition, it is often financially impossible to incur the costs of civil litigation. While the prosecution of criminal acts is assumed by the state, victims may have to assume the costs of litigation in civil cases.

While there are advantages to utilizing civil and penal laws, individually they fail to anticipate the range of remedies necessary for effective redress of domestic violence cases. This indicates a need for a comprehensive law on domestic violence that both criminalizes acts of domestic violence and provides victims with a broader set of remedies that extend beyond sanctioning the perpetrators of violence.

### **Specific Legislation**

Domestic violence legislation serves as a useful tool for packaging and integrating the remedies necessary to women who have been subjected to violence while still criminalizing the act of domestic violence. These remedies often include: protection

<sup>98</sup> See Maintenance Amendment Act, No. 2 of 1991, of 15 March 1991 (South Africa) in *Annual Review of Population Law*, vol. 18., (UNFPA, Harvard Law School) (1993) (hereinafter *Annual Review*), 59. The act also places the burden of proof on the payor in situations of non-payment and allows for a variety of court-ordered penalties for non-compliance with an order. See also Maintenance Enforcement Act 1991 of 27 June 1991 of United Kingdom of Great Britain and Wales; Local Courts (Amendment) Act, 1991 of 6 September 1991 (No. 8 of 1991) of the Republic of Zambia.

from violence and threats of violence; safety and security for victims, their dependents and property; and assistance in continuing their life without further disruption. The strength of the domestic violence legislation lies in its prohibition of gender-based violence against women, the breadth of its definitions of domestic violence crimes, the scope of the relationships it seeks to protect, the remedies it provides and lastly its effective implementation. This section will review the domestic violence legislation from twenty-one states.<sup>99</sup>

### **Prohibition of Gender-based Violence**

DEVAW urges the protection of women—within spousal and non-spousal relationships—and the girl-child<sup>100</sup> from domestic violence. Most laws surveyed here refer to violence without specific reference to women or gender-based violence. Laws have traditionally been interpreted to the exclusion of women and the unique character of gender-based violence. In the case of domestic violence, where women are disproportionately affected, there is a need for explicit recognition of women as the subject of rights.

While laws may cover all members of a household or intimate relationship, male or female, specific recognition of women and gender-based violence within the text of the law is necessary to ensure that there no room for misinterpretation. For example, in some countries the larger percentage of favorable judgments under violence laws go to men who make claims against women, even though women make up a majority of victims. While this outcome can stem from a variety of factors, the lack of an explicit recognition of women in the law can contribute to the disparity. Of the cases examined in our sample, only Ecuador specifically sets a gender-specific objective at the beginning of its legislation, while not discounting intra-family violence.<sup>101</sup>

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<sup>99</sup>The states whose laws were reviewed are: Argentina, Australia, Barbados, Bahamas, Belize, Cayman Islands, Chile, Cyprus, United Kingdom (proposed law), Ecuador, Guyana (pending), Hong Kong, Israel, Malaysia (draft law), New Zealand, Peru, Puerto Rico, Trinidad and Tobago, South Africa, St. Vincent and the Grenadines, United States of America.

<sup>100</sup>*Supra* p.61.

<sup>101</sup>Law Against Violence Against Women and the Family, Official Registration No. 839, 11 December 1995 (in effect 12 December 1995) (hereinafter Ecuador law). The legislation of Ecuador is unusual in its specificity. Art. 1



### Definition of Relationships Covered by Legislation

The laws reviewed provide an illuminating but not exhaustive list of relationships in which domestic violence occurs. All the laws surveyed covered both parties in a marital relationship. Provisions that cover both spouses can be used by a male spouse as well as a female spouse. In some of the laws reviewed, "spouse" is given a restrictive interpretation and refers only to spouses in an existing marriage, thereby excluding former spouses and intimate partners.<sup>102</sup> For example, Hong Kong's Domestic Violence Ordinance of 1986 covers only parties to an existing marriage and children.<sup>103</sup> However, under Puerto Rico's law, the term is given a broader meaning:

"Marital relationship" shall mean the relationship between spouses, former spouses, persons who are cohabiting or have cohabited, those who have, or have had an intimate consensual relationship, and those who have procreated a son or daughter by each other.<sup>104</sup>

Legislation that limits the coverage of protection from domestic violence to spouses within an existing marriage does not take into consideration non-married intimate partners or the continued links and interaction between parties who have been married and/or intimate. A former spouse can be as vulnerable to violence as an existing one.<sup>105</sup> Almost all of the states in the United States of America (U.S.) have legislation that covers former spouses.<sup>106</sup>

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states that the objective of the law is to protect the physical and psychic integrity and sexual freedom of women and the members of her family.

<sup>102</sup> See e.g., Sexual Offenses and Domestic Violence Act, 1991, (Bahamas) (hereinafter Bahamas law), sec. 31,32; Domestic Violence Ordinance 1986, (Hong Kong) (hereinafter Hong Kong law), sec. 3.

<sup>103</sup> See Hong Kong law sec. 3(1). See also Bahamas law, sec. 31.

<sup>104</sup> Act No. 54 (Substitute to S.B. 90 and S.B. 470) (Conference) of the 1st Session of the 11th Legislature of the Commonwealth of Puerto Rico (1989) (hereinafter Puerto Rico law), sec. 1.3.

<sup>105</sup> For examples, see Hong Kong law; Bahamas law, supra n.93.

<sup>106</sup> See C.F. Klein and L.E. Orloff, "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law," *Hofstra Law Review*, Vol 21 No. 4 Summer 1993 801, 814.

Some of the laws reviewed, such as the Puerto Rico law, cover non-marital relationships. Other legislation makes application of the law conditional upon cohabitation<sup>107</sup> of the parties or leaves it to the discretion of the court to determine the nature of the relationship.<sup>108</sup>

Varying terminology is used to refer to parties who live together. The law of Trinidad and Tobago refers to "de facto" spouses<sup>109</sup> while the United Kingdom (UK.) law refers to "cohabitants."<sup>110</sup> The Trinidad and Tobago law refers not only to de facto wives but also to former de facto wives.<sup>111</sup> Puerto Rico and most states in the U.S. issue civil protection orders to unmarried parties who live together as spouses.<sup>112</sup>

Very few of the laws reviewed cover parties in non-marital intimate relationships who are not cohabiting. Ecuador's legislation has one of the more comprehensive definitions and includes former cohabitants, persons who have or have had a consensual relationship, and others who share the home of the aggressor or person under attack.<sup>113</sup> In the U.S., twelve states have statutes granting protection orders to parties in dating (courting) relationships.<sup>114</sup> Kentucky, Louisiana and Virginia are among the states that allow protection of the present or past sexual partners of the victim through protection orders.<sup>115</sup>

Unmarried parents who have a child in common also are eligible for protection orders under some laws. The domestic violence laws in forty-one states in the U.S. issue civil protection for

<sup>107</sup> See e.g., Domestic Violence Act, No. 10 of 1991 (Trinidad and Tobago) (hereinafter Trinidad & Tobago law), sec. 3(1); Prevention of Family Violence Act No. 133 of 1993 (South Africa) (hereinafter South Africa law), sec. 1(2); Summary Jurisdiction (Domestic Violence) Law, 1992 of Cayman Island (hereinafter Cayman Island law), sec. 2.

<sup>108</sup> See Hong Kong law sec. 2(2), 6(3) (which requires the court to be satisfied with the permanence of the relationship before the law would be applied).

<sup>109</sup> Trinidad and Tobago law, sec. 3(1).

<sup>110</sup> *Id.* sec. 1(a).

<sup>111</sup> *Id.* sec. 3(1); see also Domestic Violence Act, No. 28 of 1992 (Belize) (hereinafter Belize law), sec. 2(c).

<sup>112</sup> See Klein and Orloff, 829-832.

<sup>113</sup> Ecuador law, art. 3.

<sup>114</sup> The states are Alaska, California, Maine, Massachusetts, New Hampshire, New Mexico, North Dakota, Pennsylvania, Puerto Rico (commonwealth), Rhode Island, Washington and West Virginia. Klein and Orloff, p. 835-837.

<sup>115</sup> Klein and Orloff, 838-842.



such parent.<sup>116</sup> The caveat of a child in common may be a useful category to encompass intimate relationships where no cohabitation takes place.

A number of laws reviewed cover a range of family members, such as parents<sup>117</sup> and siblings.<sup>118</sup> Other legislation refers to a broad category of relatives.<sup>119</sup> In Israel, the Prevention of Family Violence Law (1991) applies to siblings and aged parents.<sup>120</sup> Members of extended families may be both victims and perpetrators of domestic violence and, therefore, it is important that domestic violence legislation incorporate a broad range of relationships.

In some of the legislation reviewed, other persons such as dependents, vulnerable people and those with whom the abused person seeks refuge are covered.<sup>121</sup> For example, Guyana's legislation defines a dependent as a person over the age of eighteen years who normally resides with another person and who relies on that person for his/her welfare.<sup>122</sup> Two progressive statutes from Hawaii and Illinois in the U.S. explicitly extend civil protection orders to persons with whom the abused party seeks refuge.<sup>123</sup> It is important that the domestic violence laws cover such persons, as perpetrators often extend their violence and intimidation to those who give aid to their victims.

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<sup>116</sup>*Id.* 824-829. There has been some case law on whether protection orders may apply where a woman is pregnant and whether this constitutes a child in common. In two instances a very strict statutory interpretation denied pregnant women the ambit of protection orders. *See e.g., Woodin v. Rasmussen* 455 N.W. 2d 535 (Minn. Ct. App. 1990); *Gina C. v. Stephan F.*, 576 N.Y.S. 2d 776 (Fam. Ct. 1991). *See also* Klein and Orloff, p. 826.

<sup>117</sup> *See* Domestic Violence Bill, 1994 (Guyana) (hereinafter Guyana law), sec. 2(m); Domestic Violence Bill, 15 Dec. 1993 (Malaysia) (hereinafter Malaysia law), sec. 2 (a)(ii); Belize law sec. 2(c); Trinidad and Tobago law sec. 3(1); Violence in the Family (Prevention and Protection of Victims) Law, 1994, (Cyprus) (hereinafter Cyprus' law), sec. 2.

<sup>118</sup> *See* the Malaysia law sec. 2(b)(i); Prevention of Violence in the Family Law, 5751, 1991, (Israel) (hereinafter Israel law), sec. 1.

<sup>119</sup> *See* Malaysia law sec. 2(b)(ii) (which refers to "any other relative."); Klein and Orloff, p. 816.

<sup>120</sup> Israel law sec. 1.

<sup>121</sup> *See e.g.,* Trinidad and Tobago law sec. 3(1); Belize law sec. 2; Guyana law sec. 2(e).

<sup>122</sup> *See* Guyana law sec. 2(e).

<sup>123</sup> *See* Klein and Orloff 827-828.

Other laws refer generally to members of the household.<sup>124</sup> As abuse directed at domestic workers is increasingly documented, it is important that workers are protected under domestic violence laws. Unfortunately, few of the laws reviewed cover them. While domestic workers may have protections under other laws, recognition of this form of abuse against a household member as domestic violence under the law, could provide specific remedies responsive to the nature of the abuse.

All the laws reviewed include children as a protected class.<sup>125</sup> Guyana's domestic violence law offers a very inclusive definition of children.<sup>126</sup> In addition, each country's legislation specifies the age below which a person can be considered a child. In some laws the age limit is eighteen years<sup>127</sup> and in others it is twenty-one years.<sup>128</sup> Other laws merely mention children without reference to any age limit and make the law applicable to them as long as they are in the household.<sup>129</sup> These provisions are more inclusive as children may continue to live in a household beyond a specified age.

As noted in several international instruments<sup>130</sup> and in DEVAW, the girl-child is especially vulnerable to deprivations and exploitation within the family. Therefore, it is important that the girl-child receives special protection from violence. While provisions in legislation that account for children are important, they are insufficient without additional gender-specific language for the girl-child.

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<sup>124</sup> See Domestic Violence (Protection Orders) Act, 1992-4, (Barbados) (hereinafter Barbados law), sec. 4(1)(b).

<sup>125</sup> See e.g., Guyana law sec. 2; Barbados law sec. 2, Bahamas, sec 30; Malaysia law sec. 2; Hong Kong law sec. 2. For states in the United States whose domestic violence laws protect children, see Klein and Orloff, p. 820-824.

<sup>126</sup> See sec. 2(b) of Guyana's law.

<sup>127</sup> See e.g., Malaysia law sec. 2; Belize law sec. 3(1); Trinidad and Tobago sec. 3(1).

<sup>128</sup> See e.g., Hong Kong law, sec. 2.

<sup>129</sup> See e.g., Guyana law sec. 2(b).

<sup>130</sup> See Vienna Declaration and Program of Action, UN World Conference on Human Rights (25 June 1993).

### Definition of the Types of Domestic Violence

All the legislation reviewed has provisions prohibiting physical violence. Different terms are used to describe physical violence. For example, in Hong Kong, physical violence has been defined as "molestation."<sup>131</sup> Guyana's domestic violence legislation defines physical violence to include murder, attempted murder, use or threatened use of any other violence, physical injury, or harassment.<sup>132</sup>

Malaysia's law defines domestic violence to include: violence causing physical injury to the victim by an act which is known or ought to have been known to result in physical injury; compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain; and confining or detaining the victim against the victim's will.<sup>133</sup>

Ecuador's new legislation also is broad in scope. Intra-family violence is defined to include any action or omission that consists of physical, psychological or sexual mistreatment conducted by a member of the family against the woman or other members of the nuclear family.<sup>134</sup>

Psychological violence is prohibited in most of the laws reviewed. In some laws it is explicitly defined, but in others it can be inferred from certain provisions. For example, Guyana's domestic violence law, defines psychological abuse to include:

[a] constant pattern of conduct which is performed to the dishonor, discredit or scorn of the personal worth of a person, unreasonable limitation to the access and handling of common property, blackmail, constant vigilance, isolation, deprivation of access to adequate food or rest, threats of deprivation of custody of sons or daughters or destruction of objects held in esteem by the person, except those that privately belong to the respondent.<sup>135</sup>

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<sup>131</sup>Hong Kong law sec. 3 (1) (a) & (b).

<sup>132</sup>Guyana law.

<sup>133</sup>See Malaysia law sec. 2.

<sup>134</sup>Ecuador law art. 2. See *e.g.*, art. 3 (Spouses, parents, grandparents, offspring, brothers, sisters, and relatives up to the second degree are considered members of the nuclear family).

<sup>135</sup>Guyana law sec. 2 (r). See also Protection Against Familial Violence, No. 24.417 (28 Dec. 1994) (Argentina) (hereinafter Argentina law), art. 1; Law on Intrafamilial Violence, No. 19.325 (27 Aug. 1994) (Chile) (hereinafter Chile

Puerto Rico's legislation includes "grave emotional harm" and "intimidation,"<sup>136</sup> in its definition of psychological violence.

Verbal abuse, which can be interpreted as psychological violence, is also prohibited in some of the legislation reviewed. In Barbados "harassment," which is prohibited as domestic violence, includes persistent verbal abuse, the hiding of clothes or other property and the watching or besetting of a house.<sup>137</sup>

Under the Ecuador law, psychological violence is defined as any action, omission or conduct that causes damage, pain or emotional upset, alteration or diminishment of the woman's self-esteem or that of the family under attack. It includes intimidation, threats or the use of emotional blackmail against a member of the family and the instilling of fear of personal injury to a person or their relatives or friends or damage to one's property. Furthermore, the restriction of personal freedom is considered to be psychological violence.<sup>138</sup>

Less than half of the laws reviewed contained explicit prohibitions for sexual violence, in particular marital rape.<sup>139</sup> Domestic violence law in Puerto Rico, Guyana, Trinidad and Tobago, Belize, Malaysia and South Africa cover sexual violence within marriage.<sup>140</sup> Thus many domestic violence laws do not provide protection for women against marital rape or sexual violence in non-marital, intimate or household relationships. While some forms of sexual violence may be protected in rape and sexual abuse laws, it is important that such abuse in the context of intimate relationships or in the household be recognized as a form of domestic violence and thus subject to the protections therein.<sup>141</sup>

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law), art. 1; Law on State Policy and Society Concerning Familial Violence, No. 26260 (8 Dec. 1993) (Peru) (hereinafter Peru law), art. 2.

<sup>136</sup> See Puerto Rico law sec. 1.3(l). See also *id.*, 1.3 (c) & (d).

<sup>137</sup> Barbados law sec. 2.(c) & (d).

<sup>138</sup> See Ecuador law art. 2.

<sup>139</sup> See e.g., Hong Kong law. See also Family Homes and Domestic Violence Bill (1995), (United Kingdom) (hereinafter UK law). Both laws do prohibit molestation, which could be interpreted to cover varying forms of sexual violence.

<sup>140</sup> See e.g., Guyana law sec. 2(o) (iv); Malaysia law sec. 2(c); Belize law sec. 2; South Africa law sec. 5; Puerto Rico law sec. 3.5.

<sup>141</sup> Furthermore, as stated earlier, certain rape and sexual assault laws provide exceptions for perpetrators who have a relationship with the victim. Thus

There are many traditional practices that constitute violence against women. DEVAW specifically urges that female genital mutilation and dowry-related violence be prohibited. None of the domestic violence laws under review expressly prohibit traditional practices as an act of violence although some countries, such as Ghana and England,<sup>142</sup> have laws outside of their domestic violence legislation that criminalize specific cultural practices. It can be argued that since most of these practices include some form of physical or psychological violence, existing domestic violence laws could be used to counter such practices. Explicit recognition of prohibited acts, however, is the clearest way of ensuring protection for women, particularly when combating certain traditional or cultural practices which often go unrecognized as a violation of women's human rights.

Some of the domestic violence laws reviewed categorize the willful destruction or seizure of property as an act of violence. For example, Belize's law defines harassment to include "the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof."<sup>143</sup> Barbados law also defines harassment to include "the malicious damage of the property of a person."<sup>144</sup> These provisions reflect the frequent indirect victimization of women through the destruction of her possessions.

### **Making Domestic Violence Complaints**

All the domestic violence laws under review indicate a procedure for making complaints. In all, the victim can make a complaint. In some domestic violence laws, like that of Hong Kong, it is only the victim who can make a complaint, unless the victim is a child.<sup>145</sup> Some laws require witnesses to a crime to file a complaint.

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domestic violence legislation must include provision to supersede or compensate for those exceptions.

<sup>142</sup> *Supra* n. 81.

<sup>143</sup> See Belize law sec. 2.

<sup>144</sup> See Barbados law sec. 2.

<sup>145</sup> See Hong Kong law sec. 3(1) & 5(1). See also Cayman Island law sec. 3(1).

In other laws a police officer can file a complaint for a victim.<sup>146</sup> Barbados' law indicates that an agent for the victim can apply with the leave of the court.<sup>147</sup> The UK law states that a person associated with the victim can apply.<sup>148</sup> "Associated persons" covers other spouses, cohabitants and people living in a household.<sup>149</sup> Puerto Rico's law gives the government attorney the power to make a complaint in penal procedures.<sup>150</sup>

In cases of violence against children or dependents, most of the laws reviewed allow a broader category of persons to lodge complaints on their behalf. For instance, under some domestic violence laws, social workers or welfare officers,<sup>151</sup> probation officers,<sup>152</sup> parents and guardians<sup>153</sup> and persons with whom a child ordinarily resides<sup>154</sup> can make complaints on behalf of children.

It is important that a broad category of persons including, but not limited to police officers, health care providers, and domestic violence assistance centers, be able to file a complaint, as the victim may be incapacitated, may not have access, or may be unable to file a complaint due to fear of retaliation.

### Receiving Domestic Violence Complaints

In the laws reviewed, complaints of domestic violence are to be made to the police,<sup>155</sup> conferring upon them the duty to investigate and initiate proceedings. While the police can play a positive role in the domestic violence cases, laws which limit the receiving agents for complaints to only the police can be extremely problematic. The police are not always accessible or responsive to assisting victims by adequately investigating and initiating a complaint. The police may have discretion to decide

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<sup>146</sup>See Belize law sec 3(1) (c), Trinidad and Tobago law sec. 7(1)(c); Guyana law sec.3(1)(c).

<sup>147</sup>See Barbados law sec. 4(d).

<sup>148</sup>UK law sec. 13(2).

<sup>149</sup>Sec. 2(1)

<sup>150</sup>See Puerto Rico law sec. 2.3(a)(3).

<sup>151</sup>See e.g., Guyana law sec. 3(1)(b)(iv); Belize law sec. 3(1)(b)(iv); Trinidad and Tobago law sec. 7 (1)(b)(iv); Barbados law sec. 4(1)(b) & (e).

<sup>152</sup>See e.g., Guyana law sec. 3(1)(b)(vi); Belize law sec. 3(1)(b)(vi); Trinidad and Tobago law sec. 7(1)(b)(vi).

<sup>153</sup>See e.g., Trinidad and Tobago law sec. 7(1)(b)(ii); Belize law sec. 3(1)(b)(ii).

<sup>154</sup>See e.g., Belize law sec. 3(1)(b)(i); Trinidad and Tobago law sec. 7(1)(b)(i).

<sup>155</sup>See e.g., Chile law. art. 3B; Peru law art. 4; Argentina law art. 2.



whether or not to pursue a complaint, yet are often not sensitized to the needs of the victim in domestic violence cases. While some countries have specialized police units to handle domestic violence complaints, these units also are not always easily accessible to women in rural areas.

In Argentina, it is the police who generally receive complaints, but the law is broad enough to include others.<sup>156</sup> Under Cypriot law, an expansive list of persons including the police, family counselors, welfare officers, doctors and committee members of Association for the Prevention of Domestic Violence in the Family may receive complaints.<sup>157</sup> The complaint, however, should be made within twenty-four hours of the occurrence of the violence. Furthermore, Cypriot law empowers family counselors<sup>158</sup> to receive complaints of violence, carry out investigations, and provide other assistance to victims. Counselors may seek assistance from the police or a government officer in carrying out their functions. Ecuadorian law provides for intervention by designated judges of the Family Court, the Bureau responsible for receiving complaints from women and families, the police and judges of Civil, Penal and Tribunal Courts.<sup>159</sup>

### Filing Domestic Violence Complaints

Complaints under most domestic violence laws are given either in written or oral form. Domestic violence legislation that requires complaints to be made to the police usually envisage oral reports being made, but the police may give some victims the option of making written statements.

However, many domestic violence laws require reports be filed in court in a prescribed manner.<sup>160161</sup> Puerto Rico's law requires court officials to assist victims in filing complaints and

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<sup>156</sup> See Argentina law art. 2.

<sup>157</sup> Cyprus law sec. 10.

<sup>158</sup> *Id.* sec. 15(2).

<sup>159</sup> Ecuador law art. 8. The Ecuador legislation is *also* an example of legislation that brings in newly created family courts into the process, thereby creating a unique environment for the handling of domestic violence cases.

<sup>160</sup> See *e.g.*, Belize law sec. 8; Barbados law sec. 4; Trinidad and Tobago law sec. 8. Other laws require it to be done according to the rules of court and this is *also* in written form. See *e.g.*, Bahamas law sec. 31(2).

<sup>161</sup> See *e.g.*, First Schedule of Belize law; form 1 of Barbados law; form 1 of Trinidad and Tobago law for samples of the forms to be filled out.

stipulates that they must be made in court in either oral or written form by the victim or a legal counsel.<sup>162</sup>

Some of the legislation reviewed requires reports to be filed directly in court by the victim or other interested party.<sup>163</sup> The courts are obliged to attend immediately to the case and can proceed to issue whatever interim measures are necessary to prevent further harm to the victim before proceeding to hear the substantive application.

Other laws present a simple process for filing complaints and require court officials to assist victims.<sup>164</sup> Most of the laws specify a short period within which an application should be heard after filing. For instance Belize's law requires applications to be heard within five days of filing.<sup>165</sup>

### Investigating Domestic Violence Complaints

Much of the legislation reviewed gives special powers to the police to enter premises in order to arrest perpetrators of violence and to assist victims. For instance, section 32 of the domestic violence law of Guyana provides that:

A member of the Police Force ... may without warrant enter any premises for the purpose of giving assistance to a person on those premises whom that member has reasonable grounds to suspect is in imminent danger of suffering physical injury or has suffered physical injury at the hands of another person.<sup>166</sup>

Other laws specifically indicate steps police officers are to take to assist victims. These include ensuring that she has medical assistance if required,<sup>167</sup> taking the victim to a safe place if there is concern about her safety,<sup>168</sup> and accompanying her to

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<sup>162</sup> See Puerto Rico law sec. 2.1 and 2.3.

<sup>163</sup> See e.g., Guyana law sec. 16; Barbados law sec. 4(1); Bahamas law sec. 31(2); Hong Kong law sec. 3(1); Puerto Rico law sec. 2.1; Belize law sec. 8; Trinidad and Tobago sec. 8(1).

<sup>164</sup> See e.g., Puerto Rico law sec. 2.3.

<sup>165</sup> Belize law sec. 10.

<sup>166</sup> Australia has a similar provision, see Domestic Violence (Miscellaneous Amendments) Ordinance 1986, (Australia) (hereinafter Australia law), sec. 3(2).

<sup>167</sup> See e.g., Puerto Rico law, sec. 3.10 (a).

<sup>168</sup> *Id.* sec. 3.10 (b).



her premises to collect her belongings.<sup>169</sup> Furthermore, some laws require the police to advise the victim as to her rights and the importance of preserving evidence.<sup>170</sup>

As the police are a crucial factor in successful implementation of any law on domestic violence, it is vital that police and other enforcement officials be sensitized to the complexities of women's realities and the nature of domestic violence. For women in many communities, including ethnic or cultural minorities, undocumented women or women in prostitution, the police are to be feared and not to be trusted.

### Issuing Protection Orders

Almost all the legislation reviewed has provisions for interim protection pending a hearing or application for protection orders. Barbados' law<sup>171</sup> provides that once an application for a protection order has been filed, a court may issue an interim protection order (or *ex parte* order, as it is known in some laws)<sup>172</sup> if it is considered necessary for the protection of the victim.<sup>173</sup> Similar provisions appear in the domestic violence laws of other countries.<sup>174</sup>

The conditions for the grant of interim protection orders, however, vary. In Barbados' law the application has to be supported by oral evidence under oath or by affidavit.<sup>175</sup> In other legislation, the application is usually supported by affidavit evidence. In almost all the laws reviewed, the duration of this interim order is very short. For example in both Guyana and Belize, interim protection orders only last up to fourteen days.<sup>176</sup> In the Cayman Islands they expire after twenty-eight days or on the commencement of the hearing of the domestic violence application.<sup>177</sup>

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<sup>169</sup> See e.g., Malaysia bill sec. 5(1)(c).

<sup>170</sup> See. Puerto Rico law sec. 3.10 (d) & (e).

<sup>171</sup> Barbados law sec. 3.

<sup>172</sup> See e.g., Puerto Rico law sec. 2.5; UK law sec. 16.

<sup>173</sup> See Barbados law sec. 3(2).

<sup>174</sup> See Guyana law sec. 4(3); Trinidad and Tobago law sec. 14; Cayman Island law sec. 4.

<sup>175</sup> See Barbados law sec 3(3).

<sup>176</sup> See Guyana law sec. 28(3); Belize law sec. 19(3).

<sup>177</sup> Cayman Island law sec. 4(3)(a).

In some of the laws reviewed, interim protection orders may contain directives beyond prohibiting physical contact between the victim and perpetrator. In Barbados the domestic violence law can require the respondent to continue any legal or other obligation to the victim at judicial discretion.<sup>178</sup>

The majority of the laws reviewed provide for the issuance of long-term protection orders.<sup>179</sup> In some cases they are the only remedy provided by law.<sup>180</sup> Long-term protection orders are issued by the courts and generally prohibit the respondent from engaging in specified acts of domestic violence. They were developed initially as an intermediary response to meet the needs of battered women who do not want to leave their partners and homes. In many jurisdictions women can seek protection orders without a lawyer.

Most protection orders generally consist of direct orders from a court prohibiting a party from engaging in specified acts of violence. The orders may instruct the perpetrator to desist from abusing<sup>181</sup> or contacting the victim,<sup>182</sup> coming within their proximity,<sup>183</sup> interfering with the victim's property<sup>184</sup> and evicting a victim from premises.<sup>185</sup> In the Caribbean, most of the legislation provides for removal of the perpetrator from the home even if he is the owner.<sup>186</sup> In some of the legislation, the respondent may be ordered not to use an agent or third party to engage in any of the prohibited acts.<sup>187</sup> Some orders require reimbursement of damages to the victim.<sup>188</sup>

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<sup>178</sup> See Barbados law sec 3(2).

<sup>179</sup> See e.g., Trinidad and Tobago law sec 5(1), Guyana law sec. 5(1), Malaysia law sec. 4; Puerto Rico law sec. 2.1.

<sup>180</sup> See e.g., Barbados law.

<sup>181</sup> See e.g., UK law sec. 13(1)(a); Malaysia law sec. 4(1)(a) & (b); Bahamas law 35(a) & (b).

<sup>182</sup> See e.g., Trinidad and Tobago law sec. 5(1)(e); Belize law 5(1)(f).

<sup>183</sup> See e.g., Belize law 5(1)(a)-(d); Trinidad and Tobago law 5(1)(a)-(c).

<sup>184</sup> See e.g., Trinidad and Tobago law sec. 5(1)(g) & (h); Puerto Rico law sec. 2.1(g).

<sup>185</sup> See e.g., Puerto Rico law sec. 2.1(h); Malaysia law sec. 5(a).

<sup>186</sup> See Trinidad and Tobago law.

<sup>187</sup> See e.g., Malaysia law sec. 4(2); Belize law sec. 5(1)(j).

<sup>188</sup> See e.g., Puerto Rico law sec. 2.1(i); Malaysia law sec. 9.

Some domestic violence legislation may include provisions for custody and visitation orders,<sup>189</sup> orders for the payment of financial support<sup>190</sup> and determine other critical areas essential for the victim. New Zealand's proposed legislation<sup>191</sup> includes a wide variety of protection orders.

Under Cypriot legislation a court may impose an inhibition order against the accused, inhibiting him from entering or staying in the marital home.<sup>192</sup> These orders are issued when it is established that the accused has a history of repeated acts of violence but only if he has had at least two previous convictions for similar offenses in the last two years.

Each of the laws reviewed specifies the period of time that protection orders last. In many cases the judge has the discretion to set the expiration date.<sup>193</sup> In Chile, protective measures cannot initially exceed sixty days and then can only be extended for up to six months.<sup>194</sup> Some laws stipulate its expiration after twelve months.<sup>195</sup> In Israel an order is available for three months and may be prolonged only for one additional term.<sup>196</sup> Most of the legislation reviewed had no provisions for the full renewal of protection orders, but some did contain provisions for limited extensions.<sup>197</sup>

### Serving Protection Orders

The process of serving protection orders varies under domestic violence legislation. In most legislation, the order is to be served personally to the respondent by the applicant or her agent.<sup>198</sup> Other laws specify that court or law enforcement agents serve the order.<sup>199</sup> Some laws require the order to be filed with

<sup>189</sup> See Puerto Rico law sec. 2.1 (a)-(c).

<sup>190</sup> See Guyana law sec 5(1)(g); Puerto Rico law 2.1(e).

<sup>191</sup> Domestic Protection Act of 1982 (New Zealand) (hereinafter New Zealand law), sec. 6&7.

<sup>192</sup> Cyprus law sec. 8(1).

<sup>193</sup> See UK law sec 13(7).

<sup>194</sup> See Chile law art. 3h.

<sup>195</sup> Guyana law sec. 28; Barbados law sec 16; Malaysia law sec. 5(2)(b); Trinidad and Tobago law sec. 16.

<sup>196</sup> Israel law sec. 5.

<sup>197</sup> *Id.* See UK law sec. 26; Trinidad and Tobago law sec. 17; Belize law sec. 20; Barbados law sec. 17; Guyana law sec. 29.

<sup>198</sup> See e.g., Guyana law sec. 30(2).

<sup>199</sup> See Puerto Rico law sec 2.7(b) (where service is to be done by a Marshall of

the police branch in the area in which the parties live.<sup>200</sup> Puerto Rico's law requires the police to keep a file of all protection orders issued.<sup>201</sup>

In most jurisdictions in the U.S., law enforcement officials are responsible for serving protection orders<sup>202</sup> and for reading key terms of the order to the defendant. For example, in the state of Maine, when the perpetrator is evicted from the home, police officers must tell him that he is forbidden to have contact with the victim and must stay away from the joint residence even if he believes he has been invited back by her.<sup>203</sup> Reading the order out loud precludes the defendant from stating that he could not read and understand it.<sup>204</sup>

As protection orders are effective only when served, the process through which they are served becomes vital. Laws which require victims to serve the orders themselves, severely limits their effectiveness because too often the victim is placing herself in physical danger simply by being in contact with the perpetrator. Moreover, by having law enforcement officials participate in the service process, perpetrators are reminded that their actions constitute a violation of the law.

### Injunctions

Injunctions can be one of several available remedies.<sup>205</sup> In some countries, however, it is the only available remedy.<sup>206</sup> Injunctions may be used to prohibit various acts including the entering of a certain place (such as the home of the victim even if shared by perpetrator), harassing the victim in any way or place and disturbing the victim's use of property.<sup>207</sup> Violation of the

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the court, a law enforcement officer or a person above the age of eighteen who is not a party to the proceedings).

<sup>200</sup> Puerto Rico law sec 2.7(c).

<sup>201</sup> *Id.*

<sup>202</sup> P. Finn and S. Colson, *Civil Protection Orders: Legislation, Current Court Practices and Enforcement*, U.S. Department of Justice, National Institute of Justice, 1990, 60-61.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> See Bahamas law sec. 31 & 35 (which has matrimonial injunctions, in addition to protection orders).

<sup>206</sup> See Hong Kong law sec. 3; Israel law sec. 3.

<sup>207</sup> Israel law sec. 2(b).

terms of an injunction can be punishable with a court-imposed fine or term of imprisonment.

Injunctions may include a variety of stipulations. Section 3 of the Domestic Violence Ordinance of Hong Kong gives district courts the power to issue an injunction containing the following provisions:

- (a) a provision restraining the other party from molesting the applicant;
- (c) a provision excluding the other party from the matrimonial home, or from a specified area whether or not the matrimonial home is included in that area;
- (d) a provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home.

In Israel, under the Prevention of Violence in the Family Law, a petition for injunction may be presented by the victim, a relative of the victim, the Attorney General or a welfare officer.<sup>208</sup>

### Monetary Remedies

Under most legislation, perpetrators usually are fined if they breach the terms of a protection order or injunction. The fines imposed are either in lieu of<sup>209</sup> or in addition to terms of imprisonment.<sup>210</sup> In general, fines in domestic violence cases have been used as substitute for imprisonment and often do not represent any real financial hardship to the perpetrator.

Most of the laws reviewed have provisions for the payment of fines and stipulate the amount to be paid.<sup>211</sup> The Bahamas has a unique provision that requires a specified amount of money to be paid by the respondent for each day of continued breach above the fixed sum or imprisonment for the breach.<sup>212</sup>

As fines are paid to the state, they generally do not directly compensate the victim. Few of the laws reviewed require the perpetrator to pay compensation to the victim for the injury or loss

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<sup>208</sup>Israel law sec. 3. *See also id.* sec. 2(b) (which provides bonds for good behavior).

<sup>209</sup>*See* Barbados law sec. 11; Bahamas law sec. 32(3)(b); Belize law sec. 21.

<sup>210</sup>*See e.g.*, Guyana law sec. 31.

<sup>211</sup>*See e.g.*, Barbados law sec. 11; Bahamas law sec. 32(3)(b); Belize law sec. 21.

<sup>212</sup>Bahamas law sec. 32(3)(b).

suffered as a result of the violence. One exception to this is Section 2.1 (i) of the Puerto Rican law which requires:

the respondent to pay financial compensation from private property for damages caused by conduct constituting domestic violence. Said compensation can include, but shall not be limited to compensation for moving expenses, expenses for the repair of property, legal expenses, medical, psychiatric, psychological, counseling, guidance, lodging, housing and other similar expenses, without prejudice to other civil actions to which the petitioner is entitled.<sup>213</sup>

Such a provision may serve to encourage more women to report and prosecute domestic violence cases without the fear of cost. The financial burden imposed on perpetrators may also serve as a deterrent.

### Counseling

Many domestic violence laws reviewed contain provisions for counseling. In some instances, courts may order both parties to undergo counseling, while, under other laws, the court may order either the applicant or the respondent to do so. New Zealand's domestic violence law allows the court to recommend either or both parties to participate in counseling of a nature specified by the court.<sup>214</sup> The procedures set up by this legislation emphasize bringing parties together. While it is an important option to have where appropriate, joint counseling or mediation as remedy must be used very carefully. Inequalities between men and women and lack of adequate training for counselors can ultimately do more harm to the victim in certain situations.

In Cyprus, the law empowers counselors to receive complaints of violence and carry out investigations, make arrangements for the immediate medical examination of the victim, and take steps for criminal prosecution. Family counselors may seek any assistance from the police or a government officer in carrying out his/her functions.<sup>215</sup> In the U.S., many states authorize judges to order counseling for the respondent.<sup>216</sup> Judges may also

<sup>213</sup>See also Malaysia's law sec. 9.

<sup>214</sup>New Zealand law sec. 37.

<sup>215</sup>Cyprus law sec. 15(2)(b).

<sup>216</sup>Finn and Colson, 44.

require counseling based on statutory authorization for the courts to provide for “such other relief as the judge deems proper.”<sup>217</sup>

### Breach of Protection

Most laws contain provisions for breach of a protection order. In Puerto Rico, the law provides that an officer may enter the premises and arrest a perpetrator without a warrant<sup>218</sup> if he/she has reason to believe that the perpetrator is in violation of a protection order.

### Prison Sentences

In most of the laws reviewed, prison sentences were available as a remedy for breach of a protection order.<sup>219</sup> It is sometimes given in lieu of or in addition to fines, generally only upon proof of a breach.<sup>220</sup> In Guyana, contravention of a protection order makes the perpetrator liable for summary conviction with a fine of up to \$10,000 and imprisonment up to one year.<sup>221</sup> In the United States, the state of Illinois characterizes domestic battery as a class A misdemeanor.<sup>222</sup> A second and subsequent violation is a class 4 felony. In addition to any other sentencing alternatives for any second conviction, the offender can be sentenced to a minimum of forty-eight consecutive hours of imprisonment<sup>223</sup> The imprisonment is not subject to suspension, parole or reduction.<sup>224</sup> Aggravated battery,<sup>225</sup> stalking,<sup>226</sup> aggravated stalking,<sup>227</sup>

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<sup>217</sup>*Id.*

<sup>218</sup>See Puerto Rico law sec. 2.8. See also Guyana law sec. 33. Similar provisions appear in the domestic violence laws of Barbados, Malaysia, Belize, Puerto Rico and Illinois (USA) and New Zealand.

<sup>219</sup>See Barbados law sec. 11; Bahamas law sec. 32(b); Belize law sec. 21.

<sup>220</sup>*Id.* See also Australia law; UK law.

<sup>221</sup>See Guyana law art. 31(b).

<sup>222</sup>Illinois Domestic Violence Act of 1986, sec. 12-3.2(b).

<sup>223</sup>*Id.*

<sup>224</sup>*Id.*

<sup>225</sup>*Id.* sec. 12-4 (provides that intentional harm to an individual who is pregnant is aggravated battery). See also *id.* chpt. 38, sec. 12-4.

<sup>226</sup>*Id.* sec. 12-7.3. Stalking is a Class 4 felony. A second or subsequent offense is a Class 3 felony.

<sup>227</sup>*Id.* sec. 12-7.4. Aggravated stalking is a Class 3 felony and a second or subsequent offense is a Class 2 felony.



the violation of an order of protection<sup>228</sup> are clearly defined with prescribed sentences.

Cypriot law allocates wide discretion to the judge. The court may, in lieu of a sentence, with the consent of the accused, place him on probation with the special requirement that he receive "self-control treatment" from specialists. The court also permits suspended sentences.<sup>229</sup>

Integrated and gender-specific domestic violence legislation can provide a comprehensive response to domestic violence, but its effectiveness will depend upon the extent of its coverage. As evidenced above, much of the domestic violence legislation enacted or currently pending provides partial coverage for a specified range of persons. It does not always provide for the range of contingencies deemed necessary to successfully respond to domestic violence. Included in this review, however, are some examples of more comprehensive provisions that can be used to strengthen existing domestic violence legislation.

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<sup>228</sup>*Id.* sec. 12.30.

<sup>229</sup>Cyprus law sec. 7.



## CHAPTER 4

### *Necessary Improvements*

This section provides recommendations for improving the legal treatment of domestic violence. In responding to the questions: "What would you do to improve your country's legal treatment of domestic violence cases? Why?" and "What does your organization believe is the biggest obstacle to ending domestic violence in your country?," 146 survey respondents recommended policies to assure effective implementation of the law and affirmed the need for gender specific, comprehensive and systematically integrated domestic violence legislation.

Responses to the survey clearly showed women's overall dissatisfaction and lack of faith in the abilities of current legal systems to handle the issue of domestic violence. Survey respondents identified obstacles and improvements covering a broad range of areas that can be grouped into five major categories: 1) legislative reforms; 2) education initiatives; 3) the provision of services; 4) state initiatives; and 5) the role of non-governmental organizations (NGOs).

## Legislative Reforms

Respondents overwhelmingly indicated that the creation of new laws along with the strengthening and greater enforcement of existing laws were necessary to improve the legal treatment of domestic violence in their country. A respondent from Argentina summed up their dissatisfaction this way:

Existing legislation remains insufficient, inefficacious, neutral, does not contemplate the aspect of inequality between boys and girls, doesn't provide rapid and effective mechanisms, doesn't provide support services for housing, economic assistance or other forms of assistance, doesn't take into account prevention, nor contemplate the causes of domestic violence.

The respondents recommended three areas of reform: enactment of comprehensive domestic violence legislation; reform of family laws; and ratification of international human rights instruments.

### Integrated Domestic Violence Legislation

The majority of respondents indicated that adopting comprehensive domestic violence legislation would improve their country's legal treatment of domestic violence. Numerous respondents reinforced this by noting that the lack of comprehensive domestic violence legislation was the biggest obstacle to ending domestic violence in their countries.

Less than one-third of respondents indicated that their country had specific domestic violence legislation. Respondents pointed out, however, that even where domestic violence legislation existed, the provisions were not comprehensive. One respondent from Peru stated that "in spite of legal innovations [in the form of intra-family violence law], it remains necessary to improve the legal treatment of violence cases." They targeted the following seven areas for improvement.

#### 1. *CRIMINALIZE domestic violence*

Numerous respondents stressed the need for legislation to specifically criminalize domestic violence, recognizing gender-based violence against women as a violation of human

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rights. A respondent from Jordan said that the legislation also should specify the legal right to protection from domestic violence.

Several respondents felt that the lack of knowledge of domestic violence as a crime was one of the biggest obstacles to ending domestic violence. Only one-fourth of reported that their laws specifically prohibit violence against women. Many respondents said domestic violence was only sometimes considered a crime while several respondents stated that it was never considered a crime.

## 2. *Revise law CODES*

In addition to criminalizing domestic violence, many respondents emphasized the need to recognize domestic violence separately within the various codes of law, so as to acknowledge its unique circumstances. A respondent from Botswana stated that part of the purpose of domestic violence legislation should be to "remove domestic violence from general assault laws." According to respondents, the legislation should bring together various aspects of penal and civil laws to form a body of law that is specific and responsive to domestic violence. It was recommended that domestic violence legislation should have an impact on the civil, penal and juvenile laws.

*RECOMMENDATION: Governments should enact and implement comprehensive domestic violence legislation that specifically criminalizes and prohibits violence against women.*

## 3. *Expand the categories of RELATIONSHIPS and the ACTS of violence*

Many respondents indicated that a broad category of relationships, such as live-in partners, relatives, and former wives and partners should be protected in domestic violence legislation. They also stressed the need to expand the forms of violence considered under legal provisions. Several respondents including those from Peru, Paraguay, the Philippines and Swaziland emphasized the need to include sexual violence, in particular marital rape and incest, as well as psychological violence, as prohibited acts. One respondent recommended including coercion as a form of domestic violence.

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that:*

- ♦ *establishes and defines the broadest range of acts of domestic violence prohibited, including psychological and sexual violence and traditional practices condoning violence;*
- ♦ *establishes broad and inclusive categories of relationships protected under domestic violence legislation.*

#### **4. Establish and Provide PROTECTION ORDERS**

Ensuring the physical safety of women and their children was a key concern of respondents. Respondents listed fear of retaliatory violence as a primary reason women often do not file complaints in domestic violence situations. Many also mentioned that legislation should provide physical protection for women, particularly through the adoption of protection orders.

Several respondents specified that legislation should provide for protection orders that are both immediately and easily accessible as well as enforceable. Responses indicated that these orders should be available in a variety of circumstances including situations where women continue to live with perpetrators. Protection orders that remove the perpetrator from the family environment should be available. This would allow women the choice to remain in their homes. It is particularly important in light of the fact that many survey responses indicated that there were very few or no shelters available to battered women. Respondents pointed out that access to refuges outside of the home were very limited. For women with children or special needs, the situation is even more difficult. Some respondents recommended enforcing protection orders through automatic arrest for breach of a protection order.

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that provides:*

- ♦ *easy access to immediate, renewable pretrial protection orders;*
- ♦ *the option to issue protection orders that remove the perpetrator from the home;*
- ♦ *measures that restrict or remove perpetrator's access to firearms and other weapons;*
- ♦ *the option to temporarily rescind perpetrator's right to custody of children and restrict and supervise his access to children; and*
- ♦ *renewable, enforceable long term protection orders that prohibit the perpetrator from further violence.*

### 5. *Increase PENALTIES AND REMEDIES for Perpetrators*

Nearly one-half of respondents listed strengthening the criminal justice system's response to domestic violence as necessary to improve the legal treatment of domestic violence. Responses indicated that the penalties associated with domestic violence were not strong enough to deter it, not commensurate with the crime, and inappropriate in comparison with penalties for other crimes of violence. A respondent from Swaziland said that too often domestic violence is treated only as a misdemeanor and as a result perpetrators are able to avoid punishment. A respondent from the Netherlands felt that detention of the perpetrator was an important component of legislation. Respondents indicated that often domestic violence was treated by the legal system as a "crime of passion." As a result, the perpetrator is exonerated on the grounds that he was understandably excited to violence. This approach erroneously suggests that victims are responsible for the violence.

Survey respondents recommended a variety of changes to the penalties for domestic violence. These included: mandatory arrest in general; mandatory arrest for breach of protection orders; mandatory arrest for recidivism; longer sentences for repeat offenders; increased bail; greater financial compensation for victims; and larger punitive fines. Many respondents indicated support for a pro-arrest policy so that offenders are charged and prosecuted.

Some respondents indicated the need for rehabilitative remedies for perpetrators including mandatory counseling. Less than a quarter of the respondents reported that counseling is required of perpetrators by law. As one respondent from Colombia said, "It would be advisable in many cases to include psychological counseling or psychiatric treatment for the violent persons which could help them see their problems and limitations and face up to their life in a different manner." Some respondents supported a perpetrator's intervention program and suggested that counseling be included as part of the prison sentence, though not as an alternative to prison. Many respondents felt it was important for courts to monitor perpetrators and domestic

violence cases even after the adjudication of a complaint in order to help prevent recidivism and ensure compliance.

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that:*

- ♦ *establishes sentencing guidelines for the courts that include mandatory imprisonment for certain levels of assault and the option of imprisonment in all other cases of assault;*
- ♦ *reforms penal and civil and other law codes to enhance penalties in domestic violence cases;*
- ♦ *provides both penal and civil remedies in cases of domestic violence;*
- ♦ *provides both compensatory and punitive damages to the victim, that factor the physical, psychological and economic costs;*
- ♦ *implements remedies that oblige the perpetrator to provide financial maintenance for woman and children;*
- ♦ *establishes penalties that prevent the perpetrator from disposing joint assets and marital property;*
- ♦ *implements remedies that mandate counseling and treatment programs for perpetrators; and*
- ♦ *establishes procedures for the courts to monitor/track domestic violence cases.*

## **6. *Improve the COURT SYSTEM***

Respondents felt that domestic violence legislation must provide for the more efficient prosecution of perpetrators both through increased efficiency of the courts and increased access to them by women. Respondents identified the need for courts to allow lay advocates to support women in court. A survey response from Austria stressed that legislation should make court proceedings more sensitive to victim's needs. One recommendation for improving court access was the use of video testimony for those women who are unable to appear in court for fear of endangering themselves.

A respondent from Colombia stated the need to expand the point of entry and contact with the legal system for women. Respondents indicated that the majority of victims first report domestic violence to the police. A limited number of respondents stated that a complaint may be reported to officials other than the police including judges, medical personnel, and domestic violence assistance centers and specially trained police.

Respondents stressed the importance of gender-sensitization training for judges and other personnel involved in handling

domestic violence cases. Some respondents wanted the legal system to establish and hire specially trained personnel including police and prosecutors as well as a support staff to ensure that the provisions of domestic violence legislation are carried out. A respondent from Brazil indicated the need to provide the courts with support from professionals with training in peaceful conflict resolution.

Many respondents felt that legislation should create separate family courts to handle domestic violence cases. It was suggested that the creation of special courts would be a crucial improvement to the situation of domestic violence as they would create a forum sensitive to domestic violence with trained personnel to provide expedited justice crucial to women trying to achieve physical safety. Furthermore it would provide an appropriate venue to bring together the necessary aspects of various laws, including assault and battery, rape, marriage, family, and divorce laws, that would be incorporated under domestic violence legislation so as to provide a holistic approach to domestic violence cases.

According to respondents, domestic violence should not only be considered a separate crime but also it should have separate evidentiary standards that are sensitive to the nature of domestic violence and the needs of women. Organizations, particularly those from Latin America, noted the need to reform evidentiary standards for medical examinations that determine access to the legal system and the type of remedy available. Almost all of the respondents said that a physical exam of injuries is required as proof for investigating a complaint of domestic violence. This is problematic because the lack of knowledge of medical personnel prevents women from getting adequate treatment and fair documentation of their injuries. In addition, many women in rural areas or in lower socio-economic circumstances are unable to access timely medical help.

Respondents also advocated for victimless prosecution, whereby authorities have the option to prosecute a perpetrator for crimes of domestic violence without the initiative of the victim, provided there was sufficient evidence. A respondent from Bangladesh suggested that bringing more claims under domestic



violence laws before the courts would be an important improvement.

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that:*

- ♦ *establishes a special court system to deal with family violence with judges empowered to apply penal and civil remedies in cases of domestic violence;*
- ♦ *provides judges with support staff such as social and welfare workers and counselors to investigate, report on and monitor domestic violence cases, experts in conflict resolution and interpreters;*
- ♦ *revises standards of evidence in criminal, civil and evidence codes; and*
- ♦ *eliminates provisions that bar prosecutions of domestic violence due to time or specify a degree of injury necessary to access prosecution.*

## **7. Increase Accountability of LAW ENFORCEMENT and LEGAL OFFICIALS**

In addition to adopting gender-specific, comprehensive domestic violence legislation, respondents felt that greater enforcement of existing laws would improve the situation of domestic violence in their countries. Respondents noted that a lack of faith in the legal system and pressure from legal officials were major factors influencing women not to file domestic violence complaints. Too often women who try to access the courts are impeded by the ignorance and hostility of the very officials to whom they must complain. Survey responses advocated for strong penalties for officials who do not enforce existing laws regarding domestic violence or do not follow proper procedures and protocols for the enforcement of these laws. A respondent from Uganda stated that “laws must safeguard women in approaching authorities.”

Respondents also suggested that law enforcement, medical professionals, and court officers have clear, standard procedures for the handling of domestic violence complaints. Some respondents suggested creating units of specially trained law enforcement officials and prosecutors to handle domestic violence cases.

*RECOMMENDATION: Governments should develop and enforce:*

- ♦ *clear procedures for the filing, investigation and prosecution of complaints involving domestic violence in accordance with the principles of domestic violence legislation and human rights standards; and*



- ♦ *penalties against officials who do not follow proper procedures and protocols for the enforcement of laws in cases of domestic violence or for actions contrary to the provisions and principles in domestic violence legislation.*

### **Reform of Family Laws**

Respondents noted many obstacles embedded in existing laws that prevent and intimidate women from accessing the legal system. In some countries, the law prohibits women from testifying or taking legal action in domestic violence cases either due to their gender or to their conjugal or intimate relationship with the perpetrator. A respondent from the Netherlands noted that certain privacy laws regarding marriage make it particularly difficult for women to seek redress in cases involving domestic violence. Surveys indicated the need to remove discriminatory laws that limit women's access to the court system and limit their standing to make a complaint and have it fully prosecuted.

The survey responses highlighted the impact domestic violence has on multiple segments of a victim's life, requiring a holistic response to the issue. Responses from the survey indicate that many states have not made divorce a viable option for women. Respondents point out that women will not report domestic violence incidents nor seek a separation or divorce if it means they automatically forfeit custody of their children, economic support, and access to assets and property. Respondents recommended revision of family, separation and divorce laws to improve remedies for domestic violence.

**RECOMMENDATION:** *Governments should enact and implement domestic violence legislation that:*

- ♦ *reforms criminal and civil laws and procedural codes that impede women from taking legal action against perpetrators of domestic violence;*
  - ♦ *reforms family laws, divorce and separation laws, property laws and custody laws to account for domestic violence; and*
  - ♦ *considers perpetrator's conduct as a compelling factor in custody proceedings including in the evaluation and establishment of visitation rights.*
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### **Ratification of International & Regional Human Rights Instruments**

According to respondents, ratification, compliance with, and implementation of human rights instruments is a critical step in improving the legal treatment of domestic violence in their country. In particular, respondents indicated the need to ratify and implement CEDAW.<sup>234</sup> Respondents from Latin America also identified the Inter-American Convention as critical to ending domestic violence.<sup>235</sup>

Respondents also indicated, however, that there was a lack of awareness on the part of women and society at large about women's human rights. This was recognized as a major obstacle in combating domestic violence and an area in which reform was necessary. Respondents noted that human rights law had not been a relevant factor in existing efforts to combat domestic violence. A respondent from Cambodia indicated that the situation goes beyond a lack of awareness to a lack of belief in women's rights.

*RECOMMENDATION: Governments should ratify and implement international and regional human rights instruments, in particular CEDAW.*

*RECOMMENDATION: Governments should develop and enact legislation based on and in compliance with international human rights norms and provisions.*

### **Educational and Research Initiatives**

Another category of recommendations for the improvement of the legal treatment of domestic violence was in the area of education and training. One-fourth of the respondents cited the need for public education programs to improve the legal treatment of domestic violence.

#### **Public Education**

Respondents identified the need for states to play a greater role in educating the public on the prevention of domestic violence and forms of rehabilitation. While the dissolution of a violent relationship is sometimes the safest and the only way to stop the violence, separation and divorce as a solution often does not

<sup>234</sup> *Supra* n.2.

<sup>235</sup> *Supra* n.64.

address the social and cultural constraints to which women are subject. According to many respondents, societal and familial pressure and the desire to preserve the relationship are the major reasons why women do not file complaints. While states should make divorce and legal separation an option and provide women the wherewithal to exercise it, states also should focus on establishing programs that stress the prevention of domestic violence.

Patriarchal attitudes that relegate women to the home, sanction male dominance and condone the use of domestic violence as a legitimate form of social control were cited by a number of respondents as the primary obstacle for ending domestic violence in their countries. One respondent from Mongolia captured these attitudes with a proverb from her country which says, "A woman married is like a horse bought. I'll ride and whip her as I please."

Cultural and religious attitudes and traditions also were cited as obstacles that make it difficult to combat domestic violence. Respondents said that improving awareness of domestic violence as a crime among the public and women themselves was a necessary prerequisite in improving the legal treatment of domestic violence.

Women's acceptance of their secondary status and acceptance of domestic violence as a natural hazard of domestic life also was cited as a major obstacle. Accordingly, many respondents recommended public education programs specifically targeted towards women. Some respondents suggested that there also should be education programs directed towards youth and men. Other respondents mentioned increasing the number of international conferences on all forms of violence against women as a means to educate women.

Some respondents articulated the specific need to educate women about their *legal* rights over and above educating women about domestic violence in general. Several respondents noted that women's lack of awareness of their legal rights as the biggest obstacle to ending domestic violence and one of the major reasons why women do not file complaints. The responses suggest that if women were educated about their legal rights, they would be more likely to exercise them.

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*RECOMMENDATION: Governments should:*

- ♦ *conduct media and educational campaigns, using principles of international human rights to promote awareness of domestic violence as a crime;*
- ♦ *establish prevention programs in schools, workplaces, and community groups;*
- ♦ *promote programs aimed to promote women's sense of equality;*
- ♦ *support legal literacy programs for women to educate them about their legal rights;*
- ♦ *establish programs that engage religious leaders to take initiatives to combat domestic violence.*

### **Training Officials**

One-fourth of the respondents recommended domestic violence awareness education and training for law enforcement officials, court personnel and health care providers as a means to improve their country's treatment of domestic violence. Official personnel play a critical role in processing domestic violence complaints. Their handling of domestic violence cases can determine whether victims are encouraged to complain, whether domestic violence is identified as a crime, and the actual outcomes of trials. As administrators of the law, officials' lack of knowledge of -and attitudes towards- domestic violence and women in general, can be severely detrimental to women.

In most countries, women's first contact with the legal system in a domestic violence case is the police. The responses from the survey, however, indicate that women have serious doubts about the effectiveness of approaching them. In slightly more than half of the surveys, respondents reported that in cases of domestic violence the police generally doubt women. Nearly three-fourths of the surveys indicated that the police's tendency to doubt makes official processing of a legal complaint unlikely. Similarly, respondents noted that pressure by legal officials was one of the major reasons why women do not file complaints.

Only half the respondents noted the existence of police specially trained to receive domestic violence complaints. According to respondents, training on the issue violence against women is rare, and even when it is instituted, it is available only to a limited number of personnel. A few respondents reported its availability to judges, prosecutors, social service and medical

personnel, and politicians. Only a small number of respondents reported that such training was mandatory by law.

*RECOMMENDATION: Governments should:*

- ♦ *develop curricula on domestic violence for dissemination to police, lawyers, judges, social workers, doctors, psychologists, nurses, media and schools;*
- ♦ *establish mandatory training with regular refresher courses on the identification and responses to domestic violence for all law enforcement officials, court officials and medical personnel as part of their professional training and work requirements; and*
- ♦ *develop protocols to assist all medical personnel, including state and private practitioners, to recognize, document and report cases of domestic violence, in particular to allow early identification of abuse as well as to provide a consistent presentation of information for the purposes of legal evidence.*

### **Research and Documentation of Domestic Violence**

Respondents clearly articulated the need for greater research and documentation on domestic violence. Many respondents indicated the lack of accurate data as a major obstacle to eradicating domestic violence. Respondents voiced the need to identify the root causes of domestic violence and to make such data available to inform public policy on the subject.

*RECOMMENDATION: Governments should*

- ♦ *promote and support research on domestic violence by government agencies, academic institutions and NGOs;*
- ♦ *document the effectiveness of domestic violence laws through monitoring official compliance with and implementation of laws, court decisions and sentencing patterns;*
- ♦ *instruct police, hospitals, and other state and private institutions to collect data on domestic violence and make it readily available to all, including state agencies, the press, academic institutions, and NGOs;*
- ♦ *incorporate questions about domestic violence in national health and census surveys;*
- ♦ *research and publicize the impact of domestic violence on the physical and psychological health of the victim and the monetary cost to the state and society;*
- ♦ *establish a national Special Rapporteur to gather data on women's human right violations in accordance with the Vienna Declaration;*
- ♦ *support the extension of the mandate of the Special Rapporteur on Violence Against Women for a period of three years;*
- ♦ *support increased funding to UNIFEM to engage in data collection;*

- ♦ *establish an intergovernmental council to coordinate the collection and distribution of data on domestic violence; and*
- ♦ *comply with requirements of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to produce a comprehensive accurate report to the CEDAW Committee.*

## **Provision of Services**

### **Shelters**

The surveys revealed a serious lack of shelters available to victims of domestic violence. Few respondents felt there were adequate shelters available to victims. Over half of respondents noted the existence of only one or a few shelters in their country. Almost every respondent noted a shortage of space in shelters. Even where shelter space is available, respondents indicated that it is rarely available to *all* women, regardless of ethnicity, socio-economic status, sexual orientation, or disability. Most respondents recommended the addition of state-financed shelters that were easily accessible to all women.

### **Financial Support and Employment Development Services**

Gender-based violence against women is intimately related to women's lack of economic rights. For many women, leaving a battering situation involves a loss of financial support, particularly child support. Less than half of respondents stated that the law required the perpetrator to pay financial assistance to the victim, but all of those respondents said that the support provided was rarely adequate. Over half of respondents stated that the law required the perpetrator to pay child support. Only a few respondents stated that the law provided financial support from the government.

Respondents articulated the need for both short-term programs to accommodate women's immediate need for economic support while leaving battering situations and long-term programs to improve women's economic autonomy. The provision of job and employment training also was recommended by several respondents as a means to improve the legal treatment of domestic violence. Less than one-fourth of respondents indicated that job training was available in their countries.

### Other Services

Respondents recommended the provision of a broad range of services as improvements to the legal treatment of domestic violence. These included the provision and improvement of counseling centers, support groups, and general health services. Some respondents stated that legal aid was already made available to victims, couples and families, but needed improvement.

*RECOMMENDATION: Governments should:*

- ♦ *establish shelters for victims of domestic violence and ensure that they are accessible to all women;*
- ♦ *establish or increase the availability of child care for battered women;*
- ♦ *provide financial and technical support for community-run shelters;*
- ♦ *establish and increase mental and physical health care counseling and services available to victims of domestic violence;*
- ♦ *provide legal counseling services to victims of domestic abuse;*
- ♦ *establish employment training programs for women and target these programs to those leaving battering situations;*
- ♦ *provide interim financial support for victims leaving battering situations;*
- ♦ *uphold the fundamental human rights principles of equal opportunity and treatment in employment, including outlawing and enforcing penalties against gender discrimination in hiring and payment of wages;*
- ♦ *establish domestic violence assistance centers to coordinate the provision of information and services to battered women; and*
- ♦ *establish and ensure the provision of medical and legal services to rural areas and poorer urban areas to ensure access by all women regardless of socio-economic status or location.*

### Coordinated State Response

The creation of a national body designed to pursue a consistent and integrated response to domestic violence was suggested as an improvement to the legal treatment of domestic violence. Several respondents stated the need for greater linkages between the government legal system, law enforcement officials, government agencies and service providers to coordinate an integrated and consistent response to domestic violence.

In addition, several respondents noted the lack of state support for government policies on domestic violence and the failure of governments to seriously commit their resources to the eradication of domestic violence as a major obstacle. These



responses indicate that for countries around the world, the eradication of domestic violence is a low budget priority. One respondent from Chile noted that their law was approved without any budgetary allocation. Accordingly, respondents specifically mentioned the need for dedicated resources for the implementation and application of the law to improve the legal treatment of domestic violence.

*RECOMMENDATION: Governments should:*

- ♦ *establish a national coordinating body on domestic violence consisting of all relevant government agencies, law enforcement officials, court officials, medical professionals and NGOs;*
- ♦ *enact a national plan of action that seeks to prevent, treat and eradicate violence against women and that has an intersectoral character including the involvement of the judicial, health, education, and labor departments; and*
- ♦ *establish national budgets towards the eradication of violence against women.*

## **The Role of NGOs**

Several respondents identified the need for governments to support women's NGOs working on domestic violence as a means to improve the legal treatment of the issue. The responses indicate that support should not only be financial to ensure the provision of services but also should assist in developing a more participatory role for NGOs in the formulation and implementation of laws and national policies.

*RECOMMENDATION: Governments should:*

- ♦ *provide financial and technical support for NGOs working on the issue of domestic violence;*
- ♦ *actively engage NGOs in the national coordinating body, particularly in the development of educational campaigns; and*
- ♦ *actively involve NGOs in the formulation of policy and legislation on domestic violence.*



*PART III*

*MODEL DOMESTIC VIOLENCE  
LEGISLATION*



## CHAPTER 5

### *Model Domestic Violence Legislation*

*This model legislation was formulated in response to deficiencies identified in existing penal and civil laws as well as identified areas for improvement in current domestic violence laws. The model incorporates the recommendations of experts for improving the legal treatment of domestic violence. It provides a drafting guide to legislatures and organizations committed working for the adoption of gender-specific, comprehensive domestic violence legislation.*<sup>237</sup>

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<sup>237</sup>In addition to survey responses, legislation, secondary sources, conventions, declarations, codes and reports were reviewed. These sources included: *The Declaration on the Elimination of Violence Against Women*, *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, CEDAW's General Recommendation No. 19, legal codes from the Republic of South Africa, the Republic of Cyprus, and Israel and legal codes from the United States including, the Virgin Islands, St. Croix, and the states of Louisiana, Nebraska, Ohio, Illinois and Utah, the Model Code on Domestic and Family Violence drafted by the Advisory Committee of the Conrad N. Hilton Foundation, Model Code Project of the Family Violence Project, National Council of Juvenile and Family Court Judges, Nevada 1994.

**Section 1: Declaration of purpose.**

The purpose of this law is to:

1. Comply with and uphold international human rights standards, in particular those articulated in the UN Declaration on the Elimination of Violence Against Women, which defines violence against women in article 1 as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”
  2. Recognize that gender-based violence against women within the household and in the context of interpersonal relationships is domestic violence.
  3. Recognize that domestic violence constitutes a serious crime against the individual and society which will not be excused or tolerated.
  4. Establish legislation prohibiting violence against women within the household and interpersonal relationships, protecting such victims from violence and preventing further violence.
  5. Assure victims of domestic violence the maximum protection of the law.
  6. Create a wider range of flexible, immediate and responsive remedies, including penal and civil remedies to punish and prevent domestic violence while providing protections to victims of domestic violence.
  7. Facilitate equal enforcement of the criminal laws by deterring and punishing perpetrators who commit violence against women in the context of the household or interpersonal relationships.
  8. Establish departments, programs, services, protocols and duties including, but not limited to shelters, counseling, and job-training programs to aid victims of domestic violence.
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9. Enumerate and provide by law, comprehensive support services including, but not limited to:
  - a. programs to assist in the prevention and elimination of domestic violence including raising public awareness and the level of public education on the subject;
  - b. emergency services for victims of abuse and their families;
  - c. support programs that meet the specific needs of victims of abuse and their families;
  - d. education, counseling and therapeutic programs for the abuser and the victim and other family members, such as children.
10. Expand the ability of law enforcement officers to assist victims, to enforce the law effectively in cases of domestic violence, and to prevent further incidents of abuse.
11. Train judges, prosecutors, police officials and social workers to respond effectively to issues relating to child custody, economic support and security for the victims in cases of domestic violence as well as victims with special needs such as disabilities.
12. Provide for and train counselors to support and advise police, judges, victims of domestic violence as well as to rehabilitate perpetrators of domestic violence.
13. Develop a greater understanding at the community level of the incidence and causes of domestic violence and encourage community participation in its eradication.

## **Section 2: Definitions**

*States are urged to adopt broad definitions of acts of domestic violence and relationships protected from domestic violence, that reflect international standards.*

### **A. Relationships to be Regulated**

1. The relationships which come within the purview of protection from domestic violence must include:

wives, live-in partners, former wives or partners, girlfriends including girlfriends not living in the same house, female relatives (including but not restricted to sisters, daughters, mothers), female household workers and female household members.

2. States should not permit religious or cultural practices to impede offering all women the full protection of this law.
3. There shall be no restrictions on women bringing suits against a spouse or any other interpersonal relationship. Evidence laws and criminal and civil procedure codes must be amended to overcome these obstacles.
4. States should offer the full protection of this law to non-national women and hold non-national men accountable to the provisions of this law.

## **B. Acts of Domestic Violence**

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

## **Section 3: COMPLAINT MECHANISM**

*The law must provide for victims, witnesses to domestic violence, family members, close associates of victims, state and private medical service providers, and domestic violence assistance centers to register complaints of domestic violence to the police or file action in court.*

### **A. Duties of Police Officers**

1. Police officers must respond to every request for assistance and protection in cases alleging domestic violence.

2. Police officers must not assign a lower priority to calls and cases involving alleged incidents of abuse by family and household members than in calls alleging similar abuse and violations by strangers.
3. Police must respond in person at the scene of the domestic violence when:
  - a. the reporter indicates that violence is imminent or is in progress;
  - b. the reporter indicates that an order relative to domestic violence is in effect and is likely to be breached;
  - c. the reporter indicates that domestic violence has occurred previously.
4. Police must respond promptly even where the reporter is not the victim of the violence but is a witness to the violence, friend or relative of victim, a health provider, or is a professional working at domestic violence assistance center.
5. In responding to a call or case Police must:
  - a. interview the parties and witnesses, including children, in separate rooms to ensure an opportunity to speak freely;
  - b. record the complaint in detail;
  - c. advise the victim of the victim's rights as outlined in Section C;
  - d. fill out and file a domestic violence report as provided by law in Section D;
  - e. provide or arrange transport of the victim to the nearest hospital or medical facility for treatment and the collection of evidence if it is required or requested;
  - f. provide or arrange transport of victim and victim's children or dependents to a safe place or shelter if it is required or requested;
  - g. provide or arrange transportation to the victims' residence to collect personal belongings;
  - h. provide protection to the reporter of violence;

- i. arrange for the removal of offender from the home and if that is not possible, and the victim is in continuing danger, arrest the offender.

## **B. Alternative Complaint Procedure**

1. A victim, witness or reporter may file a complaint alleging an act(s) of domestic violence in the judicial division where:
  - a. the offender resides;
  - b. the victim resides;
  - c. where the violence took place;
  - d. where the victim is temporarily residing.
2. A victim may file a complaint alleging an act(s) of domestic violence to a state or private health facility which shall be directed to police in the judicial division where that health facility is located.
3. A relative, friend or person from whom the victim requests assistance may file a complaint alleging an act of domestic violence to the police which must be investigated accordingly.
4. Neither a complaint nor criminal/civil proceedings shall be contingent upon the victims's receipt of a medical exam.

## **C. Statement of Victims Rights**

The purpose of the Statement of Victim's Rights is to acquaint the victim of the legal remedies available to her during the initial stage of her complaint. It also outlines the duties of the police and judiciary in relation to the victim.

1. The police officer must communicate to the victim in a language understood by the victim indicating his/her name and badge number for identification. The law requires that police inform the victim and alleged perpetrator(s) of domestic violence that domestic violence is a crime. The officer must either arrest the suspect immediately or remove him from the household;
2. The officer must drive victim or arrange for her transport to a medical facility to attend to her injuries;



3. If the victim wants to leave her residence, the officer must drive or arrange for her secure transport to a safe place or shelter;
4. The officer must take all reasonable steps to ensure that the victim and her dependents are safe;
5. The officer must provide the victim with a written statement and communicate to her in a language she understands of the legal procedures available to her. The statement must indicate that:
  - a. the law provides that the victim may seek an *ex parte* interim restraining court order; and/or a court order prohibiting further violence against the victim, her dependents, anyone in her household or from anyone whom she requests assistance and refuge;
  - b. the interim restraining order and/or court order must protect the victim's property or property held in common from destruction;
  - c. the court order may require the offender to vacate the family home;
  - d. in the event of the violence taking place in the night, during weekends or public holidays, the victim must be informed of emergency relief measures available to obtain a restraining order;
  - e. the victim need not hire a lawyer to get an *ex parte* interim restraining order or court order;
  - f. the offices of the clerk of the court must provide forms and non-legal assistance to persons seeking to proceed with *ex parte* restraining orders or court orders; the victim must be advised to apply to the court in the prescribed district/jurisdiction to obtain a court order;
  - g. the police must serve the *ex parte* restraining order on the offender.

#### **D. Domestic Violence Report**

1. It shall be the duty of the police officer responding to a domestic violence call to complete a domestic violence report which must be a part of the record. A

copy of the report should be submitted to the appropriate justice department and the applicable court.

2. The Domestic Violence Report shall be in a form prescribed by the Police Commissioner. It must include but not be limited to incorporating:
  - a. the relationship of the parties;
  - b. the sex of the parties;
  - c. information regarding occupational and educational levels of parties;
  - d. the time and date the complaint was received;
  - e. the time the officer began investigation of the complaint;
  - f. whether children were involved and whether the domestic violence took place in the presence of children;
  - g. the type and extent of the abuse;
  - h. the number and type of weapons used;
  - i. the amount of time taken in handling the case and the actions taken by the officer;
  - j. the effective date and terms of any previous *ex parte* interim order or court order issued concerning the parties;
  - k. any other data necessary for a complete analysis of all circumstances leading to the alleged incident of domestic violence.
3. It is the duty of the Police Commissioner to compile and report annually to the Department of Justice/ Department of Women's Affairs/ Parliament on all the data collected from the Domestic Violence Reports.
4. The annual report must include but not be limited to:
  - a. the total number of reports received;
  - b. the number of reports made by the victims of each sex;
  - c. the number of reports investigated;
  - d. the average time lapse in responding to each reports;

- e. the type of police action taken in disposing cases including the number of arrests.

## **Section 4: Duties of Judicial Officers**

### **A. *Ex parte* Temporary Restraining Order**

*An ex parte order may be issued on the application of a victim of domestic violence in circumstances where the victim fears for her safety, or the defendant chooses not to appear in court or cannot be summoned because he is in hiding. An ex parte order may contain a preliminary injunction against further violence and/or the prevention of the abuser/defendant from disturbing the victim/plaintiff's use of essential property including the common home.*

In addition to the victim of violence, other persons should be permitted to apply for the restraining order. It is conceivable that the victim may not be in a position to access the legal system. It is also conceivable that witnesses and persons offering assistance to the victim may also be in danger of violence.

1. Where a situation of grave danger exists to the life, health and well being of the victim and she is unlikely to be safe until the court order is issued, the victim/plaintiff, a relative, or welfare/social worker may apply to a judge or magistrate on duty to provide emergency relief such as an *ex parte* temporary restraining order to be issued against the abuser within twenty-four hours of violence occurring.
2. Upon an application for an *ex parte* temporary restraining order, the court order may issue an order to:
  - a. compel the offender to vacate the family home;
  - b. regulate the perpetrator's access to dependent children;
  - c. restrain the offender from contacting the victim at work or other places frequented by victim;
  - d. compel the offender to pay victim's medical bills for injuries inflicted by the offender;
  - e. restrict the unilateral disposal of joint assets;
  - f. inform the victim and offender that if the offender violates the restraining order, he may be arrested and criminal penalties brought to bear;

- g. inform the victim that notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against offender;
  - h. inform the victim that notwithstanding the use of a restraining order under domestic violence legislation, and the application for criminal prosecution, she can activate the civil process and sue for divorce, separation, damages or compensation;
  - i. require each party to fulfill his/her continuing duty to inform the court at each proceeding for an order of protection of any civil litigation, proceeding in juvenile court and /or criminal proceedings involving either party.
- 3. The emergency relief would include an *ex parte* temporary restraining order to remain in effect till a court order is issued not more than twenty-eight days after the *ex parte* temporary restraining order was issued.
- 4. The victim must be informed of the following:
  - a. notwithstanding the use of an *ex parte* restraining order under domestic violence legislation, she can apply for an additional court order to protect her from further violence, a renewal of that court order and/or request the prosecutor to file a criminal complaint against defendant;
  - b. an application for an *ex parte* restraining order in no way affects her access to other civil remedies such as the right to apply for a judicial separation, divorce, or compensation for damages;
  - c. on twenty-four hours notice to plaintiff, the defendant may move for a dissolution or modification of the temporary restraining order.
- i. Non-compliance with an *ex parte* restraining order shall result in prosecution for contempt of court proceedings, a fine and imprisonment.

**B. Protection Orders**

1. Applications for a protection order may be made by the victim, a relative, a welfare worker or a person assisting the victim.
2. Application for protection orders may be made on or before the expiration of *ex parte* restraining orders or independently of such restraining orders.
3. Temporary or *ex parte* orders will cease to be of effect after a court order for protection is made.
4. Protection orders may operate to protect the victim, a relative, a welfare worker or person assisting the victim of domestic violence from further violence threats of violence.
5. Judges are required to conduct hearings within ten days of complaint and an application for a protection order.
6. Judges must uphold the provisions outlined in Victim's Statement of Rights.
7. The court order may provide any or all of the following relief:
  - a. restrain the offender/defendant from causing further violence to the victim/plaintiff, her dependents, other relatives and persons who give her assistance;
  - b. instruct the defendant to vacate the family home without in any way ruling on the ownership of such property;
  - c. instruct the defendant to continue to pay the rent or mortgage and to pay maintenance to plaintiff and their common dependents;
  - d. instruct the defendant to make available the use of an automobile and/or other essential personal effects to plaintiff;
  - e. regulate the defendant's access to dependent children;
  - f. restrain the defendant from contacting the plaintiff at work or other places frequented by plaintiff;

- g. upon finding that the defendant's use or possession of a weapon, prohibit the defendant from purchasing, using or possessing a firearm or such weapon as specified by the court;
  - h. instruct the defendant to pay plaintiff's medical bills, counseling or shelter expenses;
  - i. prohibit the unilateral disposition of joint assets;
  - j. inform the plaintiff and defendant that if the defendant violates the protection order, he may be arrested with or without a warrant and criminal penalties brought to bear;
  - k. inform the plaintiff that notwithstanding the use of a protection order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against defendant;
  - l. inform the plaintiff that notwithstanding use of a protection order under domestic violence legislation, she can activate the civil process and sue for divorce, separation damages or compensation;
  - m. conduct hearings *in camera* to protect the privacy of the parties.
8. The burden of proof in these proceedings is on the accused to demonstrate that such domestic violence did not take place.
9. Judges should order the dispatch of copies of all protection/restraining orders issued to the police zones where the plaintiff and those protected by the order reside, within twenty-four hours of issuing order.
10. Compliance with protection orders must be monitored by the police and the courts. Violation of a protection order is a crime. Non-compliance shall result in a fine, contempt of court proceedings and imprisonment.
11. Where the plaintiff files an affidavit that she does not have the funds to pay the costs of filing for an *ex parte* restraining order or a protection order, the orders shall be filed without the payment of fees.

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

### **Section 5: Criminal Proceedings**

*Criminal proceedings may be initiated concurrently with an application for an interim protection order or protection order under domestic violence legislation.*

1. The prosecuting attorney or Attorney-General must develop, adopt and put into effect written procedures for officials prosecuting crimes of domestic violence.
2. When a court dismisses criminal charges in a crime involving domestic violence, the specific reasons for dismissal must be recorded in the court file.
3. In criminal actions for domestic violence, the prosecuting attorney shall indicate in the information sheet that the charge for the alleged act is domestic violence.
4. The victim's testimony shall be sufficient for prosecution. No move to dismiss a complaint shall be made solely on the grounds of uncorroborated evidence.
5. Upon conviction for a domestic violence offense, the judgment must so indicate the results of the case.
6. During the trial phase, the defendant accused of domestic violence shall have no unsupervised contact with the plaintiff.
7. The issue of a restraining order or protection order may be introduced as a material fact in any criminal proceedings.
8. Depending on the nature of the offense, and where a defendant is charged for the first time with a domestic violence offense, and pleads guilty, a deferred sentence and counseling may be imposed along with a protection order provided that the consent of the victim is secured.

9. Upon conviction of a crime of domestic violence, the court may order a term of incarceration and counseling.
10. Enhanced penalties are recommended for cases involving repeat offenses, aggravated assault and the use of weapons in cases of domestic violence.
11. Counseling must not be recommended in lieu of a sentence in cases of aggravated assault.
12. Clear sentencing guidelines must be established.

### **Section 6: Civil Proceedings**

1. Protection orders may be issued while civil proceedings for divorce, judicial separation or compensation are pending.
2. In these circumstances protection orders may be issued in addition to and not in lieu of civil proceedings.
3. Protection orders and restraining orders may be issued independently, unaccompanied by an application for divorce or judicial separation.
4. The issue of a restraining order or protection order may be introduced as a material fact in subsequent civil proceedings.

### **Section 7: Provision of Services**

#### **A. Emergency Services**

1. State must provide emergency services which must include:
  - a. seventy-two hour crisis intervention services;
  - b. immediate transportation from victim's home to medical center, shelter or safe haven;
  - c. immediate medical attention;
  - d. emergency legal counseling and referrals;
  - e. crisis counseling to provide support and assurance of safety;
  - f. confidential handling of all contacts with victims of domestic violence and their families.



**B. Non-emergency services**

1. State must provide non-emergency services which must include:
  - a. delivery of services to assist in the long-term rehabilitation of victims of domestic violence through counseling, job-training, and child-care support;
  - b. delivery of services to assist in the long-term rehabilitation of abusers through counseling;
  - c. programs for domestic violence which are administered independent of welfare assistance programs;
  - d. delivery of services in cooperation and coordination with public and private, state and local services and programs.

**C. Training of Police Officers**

1. The Police Department must establish and maintain an education and training program for police officers to acquaint them with:
  - a. the nature, extent, causes and consequences of domestic violence;
  - b. the legal rights and remedies available to victims of domestic violence;
  - c. the services and facilities available to victims and abusers;
  - d. the legal duties of police officers to make arrests and to offer protection and assistance;
  - e. techniques for handling incidents of domestic violence that minimize likelihood of injury to the officer and promote the safety of the victim and her dependents.
2. Every police cadet should be trained to respond to domestic violence cases.
3. Special units should also be established with more intensive and specialized training to handle more complex cases.
4. Educators, psychologists and victims should participate in seminar programs to sensitize police.

**D. Training of Judicial Officers**

1. Provisions must be made to conduct on-going training programs for judicial officers on the handling of domestic violence cases. Training must include guidelines on:
  - a. the nature, extent, causes and consequences of domestic violence;
  - b. the issue of *ex parte* restraining orders;
  - c. the issue of protection orders;
  - d. guidance to be given to victims on available legal remedies;
  - e. sentencing guidelines.
2. Training must include an initial course involving a prescribed number of hours and an annual review involving a prescribed number hours.
3. Special family courts should also be established with intensive and specialized training to handle domestic violence cases.

**E. Training of Counselors**

1. The State must provide trained counselors to support police, judges, victims of domestic violence and perpetrators of violence.
2. The Law must mandate counseling programs for perpetrators as a supplement to and not as an alternative to the criminal justice system.
3. Counseling programs must be designed to:
  - a. help the perpetrator take responsibility for his violence and make a commitment not to inflict further violence;
  - b. educate the perpetrator on the illegality of violence.
4. Funding for counseling and perpetrator program should not be taken from resources assigned to victims of violence.
5. The law should provide but not mandate counseling for victim of violence. Counseling for victims of violence must be:
  - a. Provided as a free service;

- b. Empowering to the victim and assist her in making short-term and long-term strategies to protect her from further violence and to restore the normalcy of her life.



*PART IV*

*REFERENCES AND APPENDICES*



## *References*

### **LEGISLATION**

- Argentina- Protection Against Familial Violence, No. 24.417 (28 December 1994).
- Australia- Domestic Violence (Miscellaneous Amendments) Ordinance, No. 53 of 1986.
- Bahamas— Sexual Offenses and Domestic Violence Act, 1991.
- Bangladesh—The Constitution of Bangladesh, 1992;  
The Cruelty to Women (Deterrent Punishment) (Amendment) Act No. 37, 1988.
- Barbados—Domestic Violence (Protection Orders) Act, 1992.
- Belize—Domestic Violence Act No. 28 of 1992.
- Brazil—The Constitution of Brazil, 1988.
- Cambodia—The Constitution of Cambodia, 1993.
- Cayman Islands—The Summary Jurisdiction (Domestic Violence) Law, 1992, Law 20 of 1992.
- Chile—Law on Intrafamilial Violence, No. 19.325 (27 August 1994).
- Colombia—The Constitution of Colombia, 1991.
- Cyprus—The Violence in the Family (Prevention and Protection of Victims) Law 1994
- Ecuador—Law Against Violence Against Women and the Family, Official Registration No. 839, 25 December 1995.
- Ethiopia—The Constitution of Ethiopia, 1994.

- France—Code of Criminal Procedure, Act No.90-602,1990.
- Guyana—Domestic Violence Bill, 1994.
- Hong Kong— Domestic Violence Ordinance No. 48 of 1986.
- India—The Commission of Sati (Prevention) Act No. 3 of 1988;  
The Dowry Prohibition (Amendment) Act, No. 63 of 1984;  
The Child Marriage Restraint Act 1929.
- Israel—The Prevention of Violence in the Family Law, 1991;  
Penal Laws (Amendment) No. 26,1989.
- Malaysia—Domestic Violence Bill, 1993;  
Law Reform (Marriage and Divorce) Act No. 164 of 1976.
- Mauritania—Code Penal (Ordinance NO. 83-162).
- Netherlands—The Constitution of the Netherlands,1850.
- New Zealand—Domestic Protection Act, 1982.
- Nigeria—The Constitution of Nigeria, 1979.
- Peru—Penal Code, 1991; Law on State Policy and Society Concerning Familial Violence, No. 26260 (8 December 1993).
- Puerto Rico— Act No. 54 of 1989.
- South Africa—Prevention of Family Violence Act No. 133 of 1993;  
The Interim Constitution of South Africa, 1994;  
Maintenance Act No.2, 1991.
- Spain—Organic Act, No.3, 1989.
- St. Vincent and the Grenadines—St. Vincent and the Grenadines Domestic Violence (Summary Proceedings) Act, 1994.
- Trinidad and Tobago—Domestic Violence Law, Act No. 10 of 1991.
- United Kingdom— Family Homes and Domestic Violence Bill, 1995;  
Prohibition of Female Circumcision Act 1985;  
Magistrate's Court (Domestic Proceedings) Ordinance 1985;  
Maintenance Enforcement Act, 1991.
- United States of America—The Violence against Women Act, 1991;



Wisconsin Statutes 93-94, Injunction Ne Exeat and Receivers;  
Utah Criminal Code 76-5-108;  
Illinois Domestic Violence Act, 1986;  
Utah Code of Criminal Procedure chapter 36 Cohabitant abuse Procedures Act;  
Nebraska Protection from Domestic Abuse Act;  
Violent Crime Control and Law Enforcement act Of 1994.

Zambia—Local Courts (Amendment) Act, 1991.

## INTERNATIONAL INSTRUMENTS

African Charter on Human and People's Rights, 1982.  
American Declaration on the Rights and Duties of Man, 1970.  
American Convention on Human Rights, 1969.  
Convention on the Elimination of All Forms of Discrimination Against Women, 1979.  
CEDAW's General Recommendation No. 19.  
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.  
Declaration on the Elimination of Violence Against Women, 1994.  
European Convention on the Protection of Human Rights and Fundamental Freedoms, 1950.  
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994.  
International Covenant on Civil and Political Rights, 1966.  
International Covenant on Economic, Social and Cultural Rights, 1967.

## CASE LAW

*Anglo-Norwegian Fisheries Case*, 1951 I.C.J., II Pleadings, Oral Arguments, 428-30.  
*Cyprus v. Turkey*, Application No. 8007/77, Eur. Comm. of Hum. Rts., [1978] Y. B. Eur. Conv. on Hum. Rts. 100.  
*Gina v. Stephan F.*

*Godínez and Fairen and Solís cases*, Inter-Am. Ct. H.R. (ser. C) No. 4 (1988).

*Velasquez Case*, Inter-Am. Ct. H.R. (ser. C) No. 4. (Judgment of July 29, 1988).

*Woodin vs. Rasmussen*

*X&Y v. The Netherlands*, 91 Eur. Ct. H.R. (ser. A) (1985)

Report of International Law Commission [1973] 2 Yb.I.L.C. 189

Restatement of the Foreign Relations Law of the United States (Revised) § 702 (1986).

U.N. Reports of International Arbitral Awards i & ii.

## OTHER REFERENCES

Abdel Haleem, Asma, "Claiming Our Bodies and Our Rights: Exploring Female Circumcision as an Act of Violence," in M. Schuler (Ed.) *Freedom From Violence: Women's Strategies from Around the World*, OEF International, 1992.

Acosta, Gladys, *Derechos de las Mujeres*. Tres Ensayos. Documentos de Trabajo No. 2 (Ed.) Flora Tristán. Lima-Peru, 1990.

Acosta, Gladys, "Tratamiento Jurídico Internacional a la Violencia contra la Mujer" en *De Nairobi a Beijing: Diagnósticos y Propuestas*, Isis Internacional, Ediciones de las Mujeres No. 21, Santiago de Chile, Diciembre, 1994.

Adamo, Sonya, "The Injustice of the Marital Rape Exemption: A Survey of Common Law Countries," *American University Journal of International Law and Policy*.

Advisory Committee of the Conrad N. Hilton Foundation, *Model Code on Domestic and Family Violence*, Nevada, 1994.

Allott, P. *State Responsibility and the Unmaking of International Law*, 29 Harv. Int'l L.J. 1 (1988).

Americas Watch, *Criminal Injustice: Violence Against Women in Brazil* (New York: Human Rights Watch, 1991).

Amnesty International, *Women in the Front Line*, AI Index: ACT 77/01/91 (March 1991).

Asia Pacific Forum on Women, Law and Development (APWLD), *My Rights: Who Control*, Kuala Lumpur, 1990.

- Atkin, W.R., Sleck, D., Ullrich, V., "Protecting the Victim of Domestic Violence—The Domestic Protection Act 1982," *Victoria University of Wellington Law Review*, Vol. 14. No.1, 1984.
- Barton, Chris, "Rape within Marriage," *Law Commission Working Paper*, no. 16, 1991.
- Boland, Reed, *Annual Review of Population Law*, Vol.18, UNFPA, Harvard Law School, 1993.
- Brownlie, I. *Principles of Public International Law*, 4th ed. (Oxford: Clarendon Press, 1990), 435-436.
- CENDOC-MUJER (Centro de Documentación sobre la Mujer), *Paquete Informativo Violencia Doméstica*, Lima, Peru, 1990.
- Centre for Social Development & Human Affairs, *Violence Against Women in the Family*, UN ST/CSDHA/2, New York: United Nations, 1989
- CEPAL, "Violencia de Género: Un problema de Derechos Humanos," Documento presentado al Foro Gubernamental de Mar del Plata, Mar Del Plata-Argentina, Septiembre de 1994.
- CEPAL, "Violencia doméstica contra la Mujer en América Latina y el Caribe: Propuestas para la discusión," (Versión preliminar), 23 de Abril de 1992.
- Chetjer, Silvia, "Intervención estatal y movimiento antiviolencia en *De Nairobi a Beijing: Diagnóstico y Propuestas*," Isis Internacional, Ediciones de las Mujeres No. 21 Santiago de Chile, Diciembre 1994.
- Comisión para los Asuntos de la Mujer, Oficina del Gobernador, Segundo informe de progreso sobre la implantación en Puerto Rico de la Ley para la Prevención e Intervención con la Violencia Doméstica, (Ley 54 del 15 de Agosto de 1989) Puerto Rico, Abril de 1993.
- Connors, Jane, "Background Paper on Violence Against Women," United Nations Fourth World Conference on Women, Beijing 1995, (Unpublished).
- Cook, Rebecca, "State Responsibility for Violation of Women's Human Rights," 7 *Harvard Human Rights Journal*, 1994.
- Cook, Rebecca, (ed.), *Human Rights of Women: National and International Perspectives*, University of Pennsylvania Press, 1994.

- Coomaraswamy, Radhika, *Preliminary Report submitted to the Human Rights Commission by the Special Rapporteur on Violence against Women, its causes and consequences*, United Nations, 1994.
- Coomaraswamy, Radhika, "Of Kali born: Women, Violence and the Law," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Copelon, Rhonda, "Intimate Terror: Understanding Domestic Violence as Torture," in *Human Rights of Women, National and International Perspectives*, Rebecca Cook, ed., Pennsylvania Press, 1994.
- Dobash, R.E. and R. Dobash, "Wives: the appropriate victims of marital violence?" *Victimology*, No. 2, 1978
- Domestic Abuse Incident Report for 1992 & 1993, Office of Crime Victim Services, Wisconsin, 1994.
- Domestic Violence Action and Research Group, "A Study of Husbands' (Boyfriends') Violence in Japan".
- Economic and Social Council Resolution 1992/18*, Violence Against Women in All Its Forms, 1992.
- Economic and Social Council Resolution 1990/15*, 24 May 1990.
- Eluf, Luisa, "A New Approach to Law Enforcement: The Special Women's Police Stations in Brazil," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Fedler, Joanne, "Lawyering Domestic Violence Through the Prevention of Family Violence Act, 1993: An Evaluation after A Year in Operation," *South African Law Journal* No. 112, 1995.
- Fernandez, Irene, "Mobilizing on All Fronts: A Comprehensive Strategy for Violence Against Women in Malaysia," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Finn, Peter and Colson, Sarah, "Civil Protection Orders: Legislation, Current Court Practice and Enforcement," *U.S. Department of Justice*, 1990.
- Gelles, R. J. and Strauss, M.S., "Determinants of Violence in the Family: Toward a Theoretical Integration," in *Contemporary Theories About the Family, Volume 1*, W.D. Burr, R.

- Hill, F.I. Nye and I.L. Reiss, (eds.) New York: Free Press, 1979.
- Giles, Marianne, "Judicial Law-Making in the Criminal Courts: The Case of Marital Rape," *Criminal Law Review*, 1992.
- Gonzales, Nelly "A New Concept of Mediation: An Interdisciplinary Approach to Domestic Violence," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Heise, Lori, "Violence Against Women: The Missing Agenda" in *Women's Health: A Global Perspective*, M. A. Koblinksky, J Timyan, and J. Gay (eds.) Denver: Westview Press, 1992.
- Heise, Lori and Jane Roberts Chapman, "Reflections on a Movement: The U.S. Battle Against Women Abuse," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Human Rights Watch, *Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait* (New York: 1992)
- Human Rights Watch, *Double Jeopardy: Police Abuse of Women in Pakistan* (New York:1992)
- Jilani, Hina, "Whose laws? Human Rights and Violence," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Kelkar, Govind, "Stopping the Violence Against Women: Fifteen Years of Activism in India," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Klein, Catherine F., and Orloff, Leslye E., "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law," *Hofstra Law Review*, Volume 21, No. 4 Summer 1993.
- Lauterpacht, *International Law and Human Rights* 2d ed. (1973), at 145-60.
- Levinson, David, *Family Violence in Cross-Cultural Perspective*, Newbury Park, CA: SAGE Publications, 1989.
- Linhares, Leila y otras, *Estrategias Internacionales para terminar la violencia contra la mujer: Un llamado hacia el cambio, Los estudios de caso*, La Haya, Holanda, Junio 1993.

- McWilliams, Monica, "Domestic Violence as a Human Rights Issue," *Standing Advisory Commission on Human Rights*, 1994.
- Moghaizel, Lore, "The Arab and Mediterranean World: Legislation Towards Crimes of Honor" in *Empowerment and the Law: Strategies of Third World Women*, M. Schuler, (ed), OEF International, 1986.
- Montaño, Sonia, "Long Live the Differences with Equal Rights: A Campaign to End Violence Against Women in Bolivia," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Mwesigye, Hope, Wakabi, Yeri, "Violence against Women in Uganda: A Comparative Study of Rural and Urban Settings," *Uganda Gender Resource Center*, 1993
- Norchi, C. ed. *Combatting Violence Against Women*, (New York: Int'l. League for Human Rts., 1993). O'Donovan, Katherine, "Defenses for Battered Women who Kill," *Journal of Law and Society*, Volume 18, Number 2, Summer 1991.
- Report of the World Conference on Human Rights*, Vienna, 1993.
- Report of the Expert Group Meeting on Violence in the Family with Special Emphasis on its Effects on Women*, Vienna, 1986.
- Report of the World Conference of the United Nations Decade for Women: Equality Development and Peace*, Copenhagen, 14 to 30 July 1980, UN Publication, Sales No. E.80. IV.3 and Corrigendum)
- Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, Equality, Development and Peace, Nairobi, 15-26 July 1985*, United Nations Publications, Sales No. E. 85. IV.10.
- Report: St Vincent and the Grenadines, Initial, Second and Third Reports of St. Vincent and the Grenadines Submitted to the Committee on the Elimination of Discrimination Against Women.
- Romany, C., "State Responsibility Goes Private," in *Human Rights of Women, National and International Perspectives*, Rebecca Cook, ed., Pennsylvania Press 1994
- Roth, Kenneth, "Domestic Violence as an International Human Rights Issue," in *Human Rights of Women, National and*

- International Perspectives*, Rebecca Cook, ed., Pennsylvania Press 1994.
- Shrader-Cox, Elizabeth, "Developing Strategies: Efforts to End Violence Against Women in Mexico," in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- Schuler, Margaret (ed.), *Freedom From Violence: Women's Strategies From Around the World*, OEF International, 1992.
- Sen, Amartya, "More than One Hundred Million Women Are Missing," *New York Review of Books*, 20 December, 1990.
- Strategies for the Elimination of Violence Against Women in Society: The Media and Other Means*, Strasbourg 1993.
- Stewart, Sheelagh, Working the System: Sensitizing the Police to the Plight of Women, " in *Freedom From Violence: Women's Strategies from Around the World*, M. Schuler (Ed.), OEF International, 1992.
- The War Against Women, First Report of the Standing Committee on Health and Welfare, Social Affairs, seniors and the Status of Women, *House of Commons*, Canada, 1991.
- Thomas, Dorothy and Beasley, Michelle E., "Domestic violence as a human rights issue," *Human Rights Quarterly* 15, 1993.
- Tobin, John, "Family Violence: Opening Up the Silence," *Melbourne University Law Review*, Volume 18, December 1992.
- Toubia, Nahid, *Female Genital Mutilation: A Call for Global Action*, New York, The Population Council, 1993.
- United Nations Resolution 40/36 of November 29, 1985.
- United Nations, *Harmful Practices Affecting the Health of Women and Children*, Human Rights Series, Fact Sheet No.23, 1995.
- United Nations, *The World's Women, 1970-1990: Trends and Statistics*, U.N. Doc. ST/ESA/STAT/SER.K/8 (New York: United Nations 1991).
- United Nations Center for Social Development and Humanitarian Affairs, *Violence Against Women in the Family*, Vienna, 1989.
- Warzazi, Halima Embareck, *Report of the Second United Nations Regional Seminar on Traditional Practices Affecting Women and Children*, 1994.

Weisman, Gloria, "Preventing Violence in the Family: An Overview of Israel's New Legislation," *Journal of the Institute of Criminology*, Vol. 4 No.1. July 1992.

Women and Development Programme, "Violence Against Women: Curriculum Materials for Legal Studies", *Commonwealth Secretariat*.

Yanuzova, Marla, "Los Derechos Humanos y la Violencia contra la Mujer en la Familia," en *La Violencia y los Derechos Humanos de la Mujer*, PROFAMILIA, Bogotá, Colombia, 1992.

Zimmerman, Cathy, "Plates in a Basket Will Rattle: Domestic Violence in Cambodia," *Asia Foundation*, Cambodia, 1994.



## APPENDIX 1:

### SUMMARY OF RESEARCH DESIGN & FINDINGS

#### Research Questions and Design

##### The Study Sought to Determine:

1. the primary legal mechanisms used by states worldwide to address domestic violence;
2. whether these mechanisms are adequate; and
3. what legislative initiatives must be enacted to improve the legal system's response to domestic violence.

##### To fulfill these objectives, the study:

1. reviewed constitutions, penal & civil laws from 17 countries and domestic violence legislation from 21 countries assessing:
  - ♦ remedies available to victims,
  - ♦ acts prohibited & relationships covered under definitions of domestic violence in law,
  - ♦ complaint & sentencing procedures provided; and
2. surveyed 146 experts, including service providers, academics, lawyers, & women's rights advocates from 94 states globally.

##### Definition Issues

1. Most national legislation outlines protection from violence for family members without explicit reference to women and gender-based violence.
2. DEVAW (Declaration on the Elimination of Violence Against Women), which focuses on all forms of violence against women, defines such violence as *any act of gender-based violence against women that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.*" The study investigates domestic violence as a subset of gender-based violence against women., including violence against women and girls in the household or in the context of intimate relationships.

## **Analysis of Legal Standards**

### **International Legal Standards on Domestic Violence**

1. International law that is binding on states does not explicitly cover domestic violence, but can now be interpreted to impose a duty on states to prohibit and prevent it.
2. Recent international instruments (declarations, recommendations) that interpret and express international consensus on human rights law, explicitly require states to take legislative action to prevent and punish domestic violence. In addition:
  - ♦ DEVAW specifically articulates the need to address violence against women in the family in a legislative form;
  - ♦ CEDAW General Recommendation No. 19 urges that legal measures be taken on the issue of violence against women in the family;
  - ♦ Inter-American Convention on the Prevention Punishment and Eradication of Violence against Women requires states party to it to adopt appropriate legislation to prevent, punish and eradicate domestic violence.
3. Despite these standards and obligations, most states do not have special legislation but rely on constitutional provisions, civil & penal codes which individually are often inadequate and ineffective to address domestic violence.

### **Constitutional Provisions**

1. Provisions provide either implicit or explicit protection.
2. Explicit provisions tend to address:
  - ♦ intra-family violence or
  - ♦ only certain aspects of violence against women.
3. Implicit provisions prohibit:
  - ♦ "discrimination" generally or
  - ♦ human rights abuses but without direct reference to violence against women.

### **Penal Law**

1. Countries address domestic violence under penal law either through general provisions or amendments to cover specific aspects.

2. Advantages of using penal law to address domestic violence:
  - ♦ Certain acts of violence are criminalized;
  - ♦ Penalties can serve as a deterrent.
3. Disadvantages of using penal law to address domestic violence:
  - ♦ Women and officials see it as rigid & extreme and thus don't use it.
  - ♦ Decision to prosecute is not in hands of victim.
  - ♦ Does not provide effective remedy for repeat offenders.
  - ♦ Standards of evidence are inappropriate.
  - ♦ Most penal codes provide for a marital exemption.

### **Civil Law**

1. Countries address domestic violence under civil law primarily through divorce and tort laws.
2. Advantages to using civil law as an approach to domestic violence:
  - ♦ Remedies are varied and practical.
  - ♦ Victims set the level of penalty.
3. Disadvantages to using civil law as an approach to domestic violence:
  - ♦ The "civil" framework detracts from the criminality of the act
  - ♦ Process can be expensive and time-consuming.

### **Specific Domestic Violence Legislation**

1. The specific domestic violence legislation approach can provide an integrated strategy, addressing a broader spectrum of crimes and providing an appropriate combination of remedies.
  - ♦ It can cover not only spouses, but former spouses, de facto spouses, non-marital relationships, etc.
  - ♦ It can cover physical, psychological and sexual violence and permits a broader range of people who can make or receive complaints.
  - ♦ It can provide different remedies, such as interim protection orders, injunctions, occupation orders, monetary remedies, counseling, prison sentences.

- ♦ By integrating aspects of both penal and civil laws, it can provide the most appropriate and comprehensive set of remedies based on the individuals needs of the case and overcome the limitation of solely using a pebal or civil approach.
2. However, most current domestic violence legislation fails to explicitly recognize women and gender-based violence and thus ignoring the pernicious nature of gender abuse and the disproportionate burden on women of violence in the family.

### **Summary of Recommendations for Improvements by Survey Respondents**

#### **1. Legislative Reforms Should:**

- ♦ adopt specific domestic violence legislation;
- ♦ criminalize domestic violence;
- ♦ expand categories of relationships and violent acts;
- ♦ establish protection orders;
- ♦ improve the court system;
- ♦ improve enforcement of existing laws;
- ♦ increase penalties for perpetrators;
- ♦ improve compliance with international instruments;
- ♦ establish batterer intervention programs.

#### **2. There Should be a Coordinated State Approach that Includes Imroved:**

- ♦ interagency coordination;
- ♦ linkage among service providers and judicial system and
- ♦ support for state services.

#### **3. NGO's Should be Allowed:**

- ♦ greater participation in formulation of laws & policies and
- ♦ greater economic support.

#### **4. Educational initiatives should include:**

- ♦ training judges, law enforcement and court officials;
- ♦ basic education about domestic violence;
- ♦ educating women about their rights; and

- ♦ job training and professional development.

**5. Services should be expanded and improved, to include:**

- ♦ shelters;
- ♦ maintenance;
- ♦ counseling and support groups and
- ♦ legal services.



## *APPENDIX II:*

### *Survey Respondents' States*

Argentina	Kenya
Australia (7 territories)	Lithuania
Austria	Madagascar
Bangladesh	Malta
Barbados	Mauritius
Belize	Mexico
Bolivia	Mongolia
Botswana	Mozambique
Brazil	Namibia
British Virgin Islands	Nepal
Burkina Faso	Netherlands
Cambodia	Nigeria
Cameroon	Norway
Canada	Pakistan
Central African Republic	Paraguay
Chile	Peru
Colombia	Philippines
Costa Rica	Portugal
Croatia	Romania
Dominican Republic	Russia
Ecuador	Senegal
El Salvador	Slovakia
Ethiopia	South Africa
Fiji	Spain
France	Sri Lanka
Ghana	St Croix
Guatemala	St Vincent & the Grenadines
India	Sudan
Indonesia	Swaziland
Israel	Sweden
Japan	Switzerland
Jordan	Taiwan





## APPENDIX III:

### SUMMARY OF RECOMMENDATIONS

#### Legislative Reforms

*RECOMMENDATION: Governments should enact and implement comprehensive domestic violence legislation that specifically criminalizes and prohibits violence against women.*

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that:*

- ♦ *establishes and defines the broadest range of acts of domestic violence prohibited, including psychological and sexual violence and traditional practices condoning violence;*
- ♦ *establishes broad and inclusive categories of relationships protected under domestic violence legislation.*

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that provides:*

- ♦ *easy access to immediate, renewable pretrial protection orders;*
- ♦ *the option to issue protection orders that remove the perpetrator from the home;*
- ♦ *measures that restrict or remove perpetrator's access to firearms and other weapons;*
- ♦ *the option to temporarily rescind perpetrator's right to custody of children and restrict and supervise his access to children; and*
- ♦ *renewable, enforceable long term protection orders that prohibit the perpetrator from further violence.*

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that:*

- ♦ *establishes sentencing guidelines for the courts, that include mandatory imprisonment for certain levels of assault and the option of imprisonment in all other cases of assault;*
- ♦ *reforms penal and civil and other law codes to enhance penalties in domestic violence cases;*
- ♦ *provides both penal and civil remedies in cases of domestic violence;*
- ♦ *provides both compensatory and punitive damages to victims, that factor the physical, psychological and economic costs;*
- ♦ *implements remedies that oblige the perpetrator to provide financial maintenance for woman and children;*

- ♦ *establishes penalties that prevent the perpetrator from disposing joint assets and marital property;*
- ♦ *implements remedies that mandate counseling and treatment programs for perpetrators; and*
- ♦ *establishes procedures for the courts to monitor/track domestic violence cases.*

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that:*

- ♦ *establishes a special court system to deal with family violence, with judges empowered to apply penal and civil remedies in cases of domestic violence;*
- ♦ *provides judges with support staff such as social and welfare workers and counselors to investigate, report on and monitor domestic violence cases, as well as experts in conflict resolution and interpreters;*
- ♦ *revises standards of evidence in criminal, civil and evidence codes; and*
- ♦ *eliminates provisions that bar prosecutions of domestic violence due to time or specify a degree of injury necessary to access prosecution.*

*RECOMMENDATION: Governments should develop and enforce:*

- ♦ *clear procedures for the filing, investigation and prosecution of complaints involving domestic violence in accordance with the principles of domestic violence legislation and human rights standards; and*
- ♦ *penalties against officials who do not follow proper procedures and protocols for the enforcement of laws in cases of domestic violence or for actions contrary to the provisions and principles in domestic violence legislation.*

*RECOMMENDATION: Governments should enact and implement domestic violence legislation that:*

- ♦ *reforms criminal and civil laws and procedural codes that impede women from taking legal action against perpetrators of domestic violence;*
- ♦ *reforms family laws, divorce and separation laws, property laws and custody laws to account for domestic violence; and*
- ♦ *considers perpetrator's conduct as a compelling factor in custody proceedings, including in the evaluation and establishment of visitation rights.*

*RECOMMENDATION: Governments should ratify and implement international and regional human rights instruments, in particular CEDAW.*

*RECOMMENDATION: Governments should develop and enact legislation based on and in compliance with international human rights norms and provisions.*

## **Educational and Research Initiatives**

*RECOMMENDATION: Governments should :*

- ♦ *conduct media and educational campaigns, using principles of international human rights to promote awareness of domestic violence as a crime;*
- ♦ *establish prevention programs in schools, workplaces, and community groups;*
- ♦ *promote programs aimed to promote women's sense of equality;*
- ♦ *conduct legal literacy programs for women; and*
- ♦ *establish programs that engage religious leaders to take initiatives to combat domestic violence.*

*RECOMMENDATION: Governments should :*

- ♦ *develop curricula on domestic violence for dissemination to police, lawyers, judges, social workers, doctors, psychologists, nurses, media and schools;*
- ♦ *establish mandatory training with regular refresher courses on the identification and responses to domestic violence for all law enforcement officials, court officials and medical personnel as part of their professional training and work requirements; and*
- ♦ *develop protocols to assist all medical personnel including state and private practitioners, to recognize, document and report cases of domestic violence, in particular to allow early identification of abuse as well as to provide a consistent presentation of information for the purposes of legal evidence.*

*RECOMMENDATION: Governments should :*

- ♦ *promote and support research on domestic violence by government agencies, academic institutions and NGOs;*
- ♦ *document the effectiveness of domestic violence laws through monitoring official compliance with and implementation of laws, court decisions and sentencing patterns;*
- ♦ *instruct police, hospitals, and other state and private institutions to collect data on domestic violence and make it readily available to all, including state agencies, the press, academic institutions, and NGOs;*
- ♦ *incorporate questions about domestic violence in national health and census surveys;*

- ♦ *research and publicize the impact of domestic violence on the physical and psychological health of the victim and the monetary cost to the state and society;*
- ♦ *establish a national Special Rapporteur to gather data on women's human right violations in accordance with the Vienna Declaration;*
- ♦ *support the extension of the mandate of the Special Rapporteur on Violence Against Women for a period of three years;*
- ♦ *support increased funding to UNIFEM to engage in data collection;*
- ♦ *establish an intergovernmental council to coordinate the collection and distribution of data on domestic violence; and*
- ♦ *comply with requirements of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to produce a comprehensive accurate report to the CEDAW committee.*

## **Provision of Services**

*RECOMMENDATION: Governments should :*

- ♦ *establish shelters for victims of domestic violence and ensure that they are accessible to all women;*
- ♦ *establish or increase the availability of child care for battered women;*
- ♦ *provide financial and technical support for community-run shelters;*
- ♦ *establish and increase mental and physical health care counseling and services available to victims of domestic violence;*
- ♦ *provide legal counseling services to victims of domestic abuse;*
- ♦ *establish employment training programs for women, and target these programs to those leaving battering situations;*
- ♦ *provide interim financial support for victims leaving battering situations;*
- ♦ *uphold the fundamental human rights principles of equal opportunity and treatment in employment, including outlawing and enforcing penalties against gender discrimination in hiring and payment of wages;*
- ♦ *establish domestic violence assistance centers that will coordinate the provision of information and services to battered women; and*
- ♦ *establish and ensure the provision of medical and legal services to rural areas and poorer urban areas to ensure access by all women regardless of socio-economic status or location.*

## **Coordinated State Response**

*RECOMMENDATION: Governments should :*

- ♦ *establish a national coordinating body on domestic violence consisting of all relevant government agencies, law enforcement officials, court officials, medical professionals and NGOS;*
- ♦ *enact a national plan of action that seeks to prevent, treat and eradicate violence against women and that has an intersectoral character including the involvement of the judicial, health, education, and labor departments; and*
- ♦ *establish national budgets towards the eradication of violence against women.*

## **The Role of NGOS**

*RECOMMENDATION: Governments should :*

- ♦ *provide financial and technical support for NGOS working on the issue of domestic violence;*
- ♦ *actively engage ngos in the national coordinating body, particularly in the development of educational campaigns; and*
- ♦ *actively involve ngos in the formulation of policy and legislation on domestic violence.*





