



DEVELOPING LEGISLATION ON VIOLENCE AGAINST WOMEN AND GIRLS

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I. Introduction

Violence against women is “one of the most serious challenges of our time,” according to the [United Nations Secretary-General’s in-depth study on violence against women](#) (2006). Not only does violence against women and girls violate their fundamental human rights, it prevents women around the world from achieving their full potential. Full implementation of the human rights of women and girls is essential to the progress and prosperity of the world. States have a responsibility to promote and protect women’s rights and to insist upon the accountability of perpetrators. Effective legislation on violence against women and girls is vital in combating policies and practices throughout the world that perpetuate women’s subordinate status and undermine their human rights.

The foundation of laws combating violence against women and girls are the principles of equality and non-discrimination. Most nations need look no further than their own constitution for these fundamental guarantees. For example, Albania’s [Constitution](#) guarantees equality before the law in Article 18, which states that “all are equal before the law” and that “[n]o one may be unjustly discriminated against for reasons such as gender.” These principles may also be addressed in many different areas of a state’s law. In Belarus, for example, the [Marriage and Family code](#) (in Russian), the [Civil code](#) (in Russian), [the Labour code](#) (in Russian), and the [Housing Code](#) (in Russian), all support the goal of gender equality. Many states have also passed Gender Equality Acts which support a woman’s right to be free from violence. For example, the [Equality Act](#) (2010) of United Kingdom addresses a wide variety of non-discrimination provisions. The [Gender Equality Act](#) (2003) of Bosnia and Herzegovina defines and prohibits gender-based violence.

Provisions on violence against women and girls can be found in the criminal, civil, and administrative codes of most nations. However, these provisions are often inadequate due to limitations in definitions, scope, remedy, and implementation. National laws on early marriage, for example, should define a child as anyone under the age of 18 years, but this is rarely the case. Domestic violence laws often are not broad enough in scope to include unmarried intimate partners, leaving many victims unprotected. Legal remedies for domestic violence may include mandatory warnings or mediation between parties, both of which often cause further harm to victims. Laws on sexual assault should place the burden on the accused to prove consent to the act, and should criminalize sexual assault within an intimate relationship. Finally, laws against female genital mutilation, while an important step, often provide distressing examples of inadequate implementation and enforcement.

States must address these problems through all means at their disposal. Addressing the inadequacies of national laws should focus on criminalization of the offence, immediate and long-term strategies to protect the rights of survivors, and enhancing prevention strategies. Effective legislative remedies require a deep understanding of the root cause

of violence against women and a collaborative approach among law enforcement, judicial, social service, and health care systems. All aspects of a state's legislation must be addressed; in many nations certain legal provisions, such as immigration statutes or child protection provisions, not only do not protect women but may make women more vulnerable to violence. Laws must be examined to address consequences for women and girls, including unintended consequences. States must address all laws in multiple legal systems.

(See: [United Nations Handbook for legislation on violence against women](#) (hereinafter UN Handbook) and United Nations Division for the Advancement of Women and United Nations Economic Commission for Africa, [Good practices in legislation on “harmful practices” against women](#) (2009))

II. Guiding Principles

Ensure that the goal of the legislation is well-defined

The goal of legislation on violence against women and girls should be “...to prevent violence against women, to ensure investigation, prosecution and punishment of perpetrators, and to provide protection and support for complainants/survivors of violence.” ([UN Handbook](#), p. 65). A clearly drafted goal enables all who draft legislation and who work for its passage to review potential language in light of this goal, and to reject language which does not support it. Legislation drafted with this goal in mind will also establish a standard of intolerable behavior, deter misconduct, and provide remedies to survivors. ([UN Secretary-General’s in-depth study on violence against women](#), p. 83).

Consult with key stakeholders

Drafters should consult with key stakeholders such as complainant/survivors, law enforcement, lawyers, the judiciary, healthcare personnel, NGOs that work with complainant/survivors, and national statistics offices in order to access important information about each form of violence against women, and to facilitate the passage and implementation of the legislation. (See: [UN Handbook](#), p.65).

Ensure that the legislation is based upon reliable evidence

Drafters should utilize the most recent and reliable evidence which is available on prevalence, incidence, causes and consequences of each form of violence against women and girls. Drafters should also utilize good practices and lessons learned from states with experience in addressing each form of violence against women and girls. (See: [UN Handbook](#), p. 66).

Ensure that the legislation is based on international and regional human rights frameworks for legislation on violence against women and girls

Violence against women and girls is now well established as a form of gender-based discrimination that violates fundamental human rights. International and regional treaties, conventions and agreements call for the prevention and prosecution of violence against women, and for redress for complainants/ survivors. United Nations bodies such as the Security Council and the General Assembly have passed comprehensive resolutions stressing the importance of state involvement at all levels in preventing and ultimately eliminating violence against women. These instruments hold states accountable for failing to act with due diligence to protect individual women and girls from acts of violence, for ensuring that law enforcement, the judiciary, and health care and social service providers are trained in the dynamics of gender violence, for providing reparations to survivors, and for providing them with assistance, often best accomplished through consistent and adequate funding to women’s NGOs, which have the trust of survivors and the expertise to provide them with assistance.

International and regional instruments provide direction to states parties on how to meet their obligation to develop and implement legislation on violence against women and girls:

- The [Universal Declaration of Human Rights](#) (1948) in Article 3 states that “[e]veryone has the right to life, liberty and security of person.” Article 7 states that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 8 declares that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
- The [International Covenant on Civil and Political Rights](#) (1966) (ICCPR) in Article 2 prohibits discrimination on the basis of sex, and obligates states parties to “...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The ICCPR created the [Human Rights Committee](#) (Article 28), to which States parties must report upon request. The Committee has issued a number of General Comments on thematic issues. In [General Comment 28](#), entitled *Equality of rights between men and women, (Art. 3)*, the Committee declared that States parties are responsible for ensuring the equal enjoyment of rights without any discrimination. (Paragraph 4) It noted that states parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. (Paragraph 5) General Comment 28 also provides recommendations and requirements for States parties, including:

State parties should provide information to enable the Committee to ascertain whether access to justice and the right to a fair trial, provided for in article 14, are enjoyed by women on equal terms to men. (Paragraph 18)

States parties must provide information to enable the Committee to assess the effect of any laws or practices that may interfere with women's right to enjoy privacy and other rights protected by article 17 on the basis of equality with men. (Paragraph 20)

- The [International Covenant on Economic, Social and Cultural Rights](#) (1976) in Article 3 declares that states parties must “...ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth [therein].”

- The [Convention of the Elimination of All Forms of Discrimination Against Women](#) (CEDAW) (1979) in Article 1 defines discrimination against women as:

...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

As stated in Article 2, states parties to CEDAW must eliminate this discrimination by adopting "...appropriate legislative and other measures, including sanctions where appropriate..." and must agree to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination..."

- The [Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women](#) (2000) allows individuals to bring complaints or inquiries to the independent experts of the [Committee on the Elimination of Discrimination against Women](#), when there has been an alleged violation of CEDAW. For example, in [A.T. v. Hungary](#), a victim of severe domestic violence brought a claim to the Committee alleging that Hungary failed to protect her. In 2005, the Committee found that although A.T. sought help from Hungarian civil and criminal courts and child protection authorities, the Hungarian government failed to provide her with any assistance or protection. The Committee found that Hungary had violated its obligations under the Convention, and made recommendations to Hungary that it act to protect the safety of A.T. and act more generally to effect the rights granted under the Convention.

The Optional Protocol in Article 8 also establishes an inquiry procedure that allows the Committee to initiate an investigation where it has received reliable information of grave or systematic violations by a State Party of rights established in the Convention. This was the basis for the 2005 [Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico](#), regarding the abduction, rape, and murder of women in the Ciudad Juárez area of Chihuahua, Mexico.

- The [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (1984) in Article 1 defines torture as severe mental or physical pain or suffering that is intentionally inflicted either by a State actor or with the consent or acquiescence of a State actor for an unlawful purpose. In article 2, states are obligated to prevent torture that is caused by private actors.

- In [General Recommendation 12](#), the Committee on the Elimination of Discrimination against Women recommended that in their periodic reports to the Committee states should include information about existing laws that protect women against violence, other measures that have been implemented to eradicate violence against women, and information about support services for victims. States parties also were asked to send the Committee statistical data about violence against women.
- In [General Recommendation 19](#), the Committee on the Elimination of Discrimination against Women interpreted the term “discrimination” used in CEDAW to include gender-based violence by stating in para. 6 that it is:

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

The Committee also rejected customary or religious justifications for gender-based violence in para. 11:

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.

The Committee recommended in para. 24(b) that “States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity...” It also noted in para. 24(t) that “States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence,” including legal, criminal, civil and compensatory measures, preventative measures such as public information campaigns, and protective measures such as shelters and support for victims and for those at risk of violence.

- The [Convention on the Rights of the Child](#) (1990) (CRC) details the rights of children to special care and assistance that were first enumerated in the [Universal Declaration of Human Rights](#) (1948), the [Geneva Declaration of the Rights of the Child](#) (1924), the [Declaration of the Rights of the Child](#), (1959), the [International Covenant on Civil and Political Rights](#) (1976), and the [International Covenant on Economic, Social and Cultural Rights](#) (1976). Article 19 of the CRC requires states parties to take all legislative and administrative measures necessary to protect children from all forms of physical or mental violence, injury, abuse, neglect, maltreatment, or exploitation, and states that these protective measures should include programs for prevention, protection, and support for child victims.
- The [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#) (2000) in Article 3 prohibits the sale, sexual exploitation, and forced labor of children, among other provisions.
- The United Nations [Declaration on the Elimination of Violence against Women](#) (DEVAW) (1993) acknowledged that the root cause of violence against women is the subordinate status of women in society by stating that:

...violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men...

Two international instruments address specific forms of violence against women:

- The [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#) (2000) requires states to name trafficking as a criminal offence, and to offer a broad range of services to victims, including housing, counseling, medical assistance, educational opportunities, and reparations. It also requires states to take measures to alleviate the vulnerability of people, especially women and children, to trafficking and to strengthen measures to reduce the demand which leads to trafficking.
- The [Rome Statute of the International Criminal Court](#) (2002) established the International Criminal Court (ICC) to deal with the most serious crimes of concern to the international community. Its preamble declares that is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes. In Article 7(g), the Rome Statute identifies rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population. The acts are classified as war crimes under Article 8.

The Rome Statute allows victims to testify (Article 69) and to participate in the proceedings (Article 68(3), and requires the ICC to protect their safety, well-being, interests and privacy (Article 68(1). In so doing, the ICC must have regard for factors such as gender and the nature of the crime, particularly where the crime involves sexual or gender violence or violence against children. (Article 68(1)) The Prosecutor is also required to take appropriate measures to protect victims and witnesses during the investigation and prosecution of such crimes. (Article 68(1)) Article 68(2) provides for measures to facilitate the testimony of victims of sexual violence, such as presentation of evidence by electronic means. Finally, the ICC is to be staffed with people who are knowledgeable about gender-based violence. (Article 43(6))

The United Nations Security Council has addressed sexual violence against women in conflict situations by enacting specific resolutions:

- [Security Council Resolution 1325](#) (2000) calls on member states to incorporate a “gender perspective” and increase the equal participation of women in the “prevention and resolution of conflicts” and in the “maintenance and promotion of peace and security.” It calls upon parties involved in armed conflict to abide by international laws that protect the rights of civilian women and girls and to incorporate policies and procedures that protect women from gender-based crimes such as rape and sexual assault.
- [Security Council Resolution 1820](#) (2008) called for an end to the use of brutal acts of sexual violence against women and girls as a tactic of war and an end to impunity of the perpetrators. It requested the Secretary-General and the United Nations to provide protection to women and girls in UN-led security endeavors, including refugee camps, and to invite the participation of women in all aspects of the peace process.
- [Security Council Resolution 1888](#) (2009) detailed measures to further protect women and children from sexual violence in conflict situations, such as asking the Secretary-General to appoint a special representative to coordinate the mission, to send a team of experts to situations of particular concern, and to mandate peacekeepers to protect women and children.
- [Security Council Resolution 1889](#) (2009) reaffirmed Resolution 1325, condemned continuing sexual violence against women in conflict situations, and urged UN member states and civil society to consider the need for protection and empowerment of women and girls, including those associated with armed groups, in post-conflict programming.

The United Nations General Assembly has passed several resolutions on intensification of efforts to eliminate all forms of violence against women. Among these are:

- [GA Resolution 61/143](#) (2007) reminded states that they must not use customs, traditions, or religious beliefs as excuses for avoiding their obligation to eliminate violence against women and girls. It urged states to organize a systematic and comprehensive approach to the problem, including: reviewing laws and regulations affecting violence against women and girls; preparing amendments or revisions as necessary; ending impunity for the violence by prosecuting perpetrators; providing training for law enforcement and the judiciary; and allocating resources for these efforts. It noted that girls and women are particularly at risk in conflict or post-conflict situations. States were urged to collect and analyze data on violence against women and girls, and the Secretary-General was requested to establish a coordinated database which would contain information provided by states on all aspects of policies, laws, and programs on violence against women and girls.
- [GA Resolution 62/133](#) (2008) asked for broad support of national efforts to eliminate violence against women and girls, and stressed that adequate funds should be designated within the United Nations system to promote these efforts.
- [GA Resolution 63/155](#) (2009) took note of the launch of the Secretary-General's campaign to end violence against women, "UNiTE to End Violence against Women." It emphasized the importance of training for state officials who must implement policies and programs on violence against women and girls, and suggested that states develop a national plan in partnership with relevant stakeholders. States were also urged to evaluate the impact of their existing legislation on violence against women in light of low reporting rates, and to amend law and procedure as necessary. The Resolution exhorted states to punish all forms of violence against women as criminal offences, and to redress the harm caused to victims. Importantly, it noted that a victim's desire not to press charges must not be an impediment to prosecution of perpetrators, and that legal assistance must be available to these victims so that they can make informed decisions. States were also urged to establish shelters and crisis centers for victim support, and to ensure "adequate and comprehensive rehabilitation and reintegration of victims of violence into society."

The General Assembly also adopted the [Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice](#) (1997). A [draft Updated version of the Model Strategies](#) was submitted to the UN Commission of Crime Prevention and Criminal Justice at its 19th session in May 2010.

Another United Nations mechanism, the [Special Rapporteur on violence against women](#), has issued numerous comprehensive reports which have informed states and citizens on the issue of state compliance with the responsibility for preventing violence against women. See: [15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences](#).

Other important United Nations Mechanisms include the [Special Rapporteur on the sale of children, child prostitution and child pornography](#), and the [Special Rapporteur on trafficking in persons, especially women and children](#).

Regional Treaties

The following are selected examples of regional legal instruments which provide a foundation for the right of women and girls to be free of violence.

- The preamble to the [American Declaration of the Rights and Duties of Man](#) (1948) states that:

The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness...

It declares in Article I that “[e]very human being has the right to life, liberty and the security of his person.” In Article V, it states that “[e]very person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.” Article XVIII also states that “[e]very person may resort to the courts to ensure respect for his legal rights.”

- Article 3 of the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#) (Convention of Belém do Para) (1994) states that women have “the right to be free from violence in both public and private spheres.” Article 4(g) declares that a woman has the right “to simple and prompt recourse to a competent court for protection against acts that violate her rights...” Under Article 7, states parties must exercise due diligence to prosecute, punish and prevent such violence, and “...include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary...”

- The [European Convention on Human Rights](#) (1950) states, in Article 5, that “[e]veryone has the right to liberty and security of person.” In Article 14 it states that the “enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” In [Opuz v. Turkey](#) (2009), the [European Court of Human Rights](#) found that Turkey had failed to use due diligence to protect the plaintiff from domestic violence, as was required under the [European Convention on Human Rights](#) and the [Convention on the Elimination of All Forms of Discrimination Against Women](#), and awarded the plaintiff damages.
- The [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) (The Maputo Protocol) (2003) in Article 4 mandates states parties to “...adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.”
- The [Declaration on the Elimination of Violence Against Women in the ASEAN Region](#) (2004) in section 4 includes this agreement by states parties:

To enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimisation of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody...

For more information on the international and regional legal and policy instruments and jurisprudence which provide the framework for legislation on violence against women, see:

- [United Nations Secretary-General’s in-depth study on violence against women](#) (2006), pp. 25-27.
- [United Nations Documents That Protect Women’s Rights](#), StopVAW, The Advocates for Human Rights
- [European Documents That Protect Women’s Rights](#), StopVAW, The Advocates for Human Rights
- Compendium of International Standards, from [Drafting Gender-Aware Legislation: How to Promote and Protect Gender Equality in Central and Eastern Europe and in the Commonwealth of Independent States](#), (2003), p. 49.

Legislation on violence against women and girls should be based on specific guiding principles

Experience over time and in many different contexts has shown that certain core standards should guide the development of laws combating violence against women to ensure that they accomplish the goal of protecting women, and to guard against unintended consequences that may harm women and girls. Experts from around the world have developed these guiding principles. Laws should:

- Recognize that violence against women is a form of gender-based discrimination and a violation of human rights.
- Address violence against women and girls through a comprehensive approach that involves the constitutional, civil, criminal and administrative law of a nation.
- Be modified, including those in multiple legal systems, when they are in conflict with new laws on violence against women and girls.
- Provide that no custom, tradition or religious tenet may be used to justify violence against women and girls.
- Criminalize all forms of violence against women and girls and charge police, prosecutors, and judicial officials with specific duties to enforce the laws on violence against women and girls in a non-discriminatory manner.
- Provide safety, aid and empowerment for survivors through criminal and civil provisions which include a broad range of remedies.
- Ensure that investigations do not create secondary victimization through attitudes or techniques and minimize intrusion into lives of victims while maintaining high standards for collection of evidence.
- Provide for prosecution and punishment of perpetrators.
- Provide that no mediation provisions are a part of legislation on violence against women and girls.
- Contain provisions that ensure that women are not re-victimized by the legal process or experience secondary victimization.
- Contain provisions that ensure that women have full access to the civil and criminal justice systems.
- Contain provisions for the full and sustained funding of the implementation of the law.
- Contain regulations and protocols for the implementation of the law to ensure that enforcement does not languish.
- Contain provisions that mandate the training of law enforcement officials, including police, prosecutors, defense attorneys, and family law attorneys, the judiciary, health care providers, social service providers, teachers, and religious, customary, community, and tribal leaders, on women's human rights and violence against women and girls, including all relevant domestic laws, policies, and programmes as well as international legal instruments.

- Address prevention of violence against women and girls through awareness-raising campaigns, education and sensitization of the media, information on violence against women and girls at all levels of educational curricula, and through awareness and promotion of the safety of women in public spaces and in cyberspace.
- Contain provisions to ensure the monitoring of implementation of laws on violence against women and girls, including monitoring of implementation for different groups of women based upon race, class, ethnicity, religion, disability, culture, indigenous or migrant status, legal status, age or sexual orientation.
- Contain provisions to ensure the systematic and coordinated collection of data on the prevalence, causes and consequences of violence against women, which is disaggregated by sex, race, age, ethnicity, relationship between perpetrator and victim, and other relevant characteristics.
- Be amended when necessary to address unintended consequences of new laws.

([Secretary-General's in-depth study on violence against women](#), p. 83; [Good practices in legislation on "harmful practices" against women](#) (2009); [United Nations Handbook for legislation on violence against women](#) (2009), p. 2-3. A video dialogue between experts discussing these principles is available [here](#). See also: [Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), (2009).)

These principles can also form a powerful basis for advocacy around new laws, as well as guide their development. For information on advocating for legislation on violence against women and girls, see the section on [Advocating for new laws](#).

Legislation on violence against women should contain specific implementation mechanisms

Effective legislation on violence against women should include provisions that will facilitate the implementation of the law. Common implementation mechanisms include:

- Creation of a national plan or strategy to implement the legislation. A well-written national plan should include specific benchmarks and timetables. Government entities should be held accountable for meeting benchmarks established in the law. For example, the [Bulgarian Law on Protection against Domestic Violence](#) (2005) required its Ministries to develop a Domestic Violence Prevention and Protection Programme within 6 months of the entry of the law into force (Final Provisions, §2). For more information on implementation strategies, see the section on [Implementation of Laws on Violence Against Women and Girls](#).
- Creation of an institution, body, or agency to monitor and evaluate the implementation of the law. This body should include members, or provide a mechanism for input, from all relevant stakeholders including: government

ministries with oversight of police, the judiciary, women, families and children, statistics, human rights, and health; civil society organizations focused on women's rights, international human rights, and children's rights; victim and survivor groups; and private actors such as employers, unions, health care organizations, and other relevant service providers. For more on monitoring bodies, see the section on [Monitoring of Laws on Violence Against Women and Girls](#).

- Allocation of a budget that is sufficient to implement all aspects of the law, including funding for training public officials who will enforce the law, collecting statistics on violence against women, monitoring the laws when enacted, conducting research, and educating the public on all aspects of violence against women and girls. (See: [United Nations Handbook for legislation on violence against women](#) (2009), 3.2.2)

Tools for developing legislation on violence against women and girls

- International Centre for Criminal Law Reform and Criminal Justice Policy, *Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice: Resource Manual* (1999). Available in [English](#).
- United Nations Department of Economic and Social Affairs, Division for the Advancement of Women, *United Nations Handbook for legislation on violence against women* (2009). Available in [Arabic](#), [English](#), [French](#), [Mandarin](#), [Russian](#) and [Spanish](#).
- United Nations Development Program, *Drafting Gender-Aware Legislation: How to Promote and Protect Gender Equality in Central and Eastern Europe and in the Commonwealth of Independent States* (2003). Available in [Albanian](#), [English](#) and [Russian](#).
- United Nations Division for the Advancement of Women and United Nations Economic Commission for Africa, *Good practices in legislation on "harmful practices" against women*, (2010). Available in [English](#).
- United Nations Commission on Crime Prevention and Criminal Justice, *Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*, March 2009. Available in [English](#).
- United States National Advisory Council on Ending Violence Against Women, *The Toolkit to End Violence Against Women* (2001). Available in [English](#).

III. Drafting Specific Legislation on Violence against Women and Girls

Throughout this knowledge module, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a good example or a promising practice.

Some of the laws cited herein may contain provisions which authorize the death penalty. In light of the United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

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- **Maltreatment of Widows**
- **Dowry-Related Violence**

Domestic Violence

Overview

Objectives, Definitions and Scope of Legislation

Rights Of Complainants/Survivors

Coordinated Community Response and Implementation of Laws

Civil Remedies On Domestic Violence

Criminal Justice System Response To Domestic Violence

Criminal Law Provisions

Other Provisions Related To Domestic Violence Laws

Tools

Overview

Core elements of legislation on domestic violence

The following elements should be established as the core elements of any domestic violence law:

- Criminalization of acts of domestic violence;
- A fully developed order for protection civil remedy, including an emergency or ex parte order for protection;
- Prohibition of perpetrators from possessing a firearm;
- Allowing courts, in protection orders, to at least temporarily order child custody and support to the non-violent parent, and one allowing courts to enter a protection order as to the child;
- Statements of rights of complainant/survivors and services available to them;
- Provisions on implementation of the law, including training of relevant professionals, monitoring and evaluation of the law, and funding of the implementation of the law;
- A criminal offense for violation of the order for protection with a cross-reference to any relevant provisions of the criminal laws, such as punishment for various level of offenses;
- Enhanced penalties for multiple violations of the order for protection; and
- Enhanced penalties for other domestic violence-related criminal offenses.
- Establishment of inter-agency task force to ensure a coordinated community response to domestic violence. (See: [Drafting Domestic Violence Laws](#), StopVAW, The Advocates for Human Rights)

Sources of international law

These international statements of law and principle provide a foundation for the right to be free from domestic violence.

- The [Universal Declaration of Human Rights](#), 1948, states that “Everyone has the right to life, liberty and security of person” in Article 3. In Article 7, it states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” In Article 8, it declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
- The [International Covenant on Civil and Political Rights](#) (1966) prohibits discrimination on the basis of sex, and mandates states parties to “...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Article 2
- The [International Covenant on Economic, Social and Cultural Rights](#) (1976) declares that states parties must “...ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth [therein].” Article 3
- The [Convention of the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979, defines discrimination against women as:

“...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (Article 1)

- State parties to CEDAW must eliminate this discrimination by adopting “...appropriate legislative and other measures, including sanctions where appropriate...” and must agree “To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination...” (Article 2)
- In [General Recommendation 19](#), 1992, the Committee on the Elimination of Discrimination Against Women interpreted the term “discrimination” used in CEDAW to include gender-based violence by stating that it is

“...violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.” (Paragraph 6)

It also rejects customary or religious justifications for domestic violence:

“Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” (Paragraph 11)

Finally, the Committee recommends that “States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity...” 24(b)

- The United Nations [Declaration on the Elimination of Violence against Women](#), (DEVAW) 1993, acknowledged that the root cause of violence against women is the subordinate status of women in society by stating that:

“...violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men...” Preamble

Regional Treaties

- The [American Declaration of the Rights and Duties of Man](#) (1948) states that:

“The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness...” Preamble

It declares that “Every human being has the right to life, liberty and the security of his person.” Article I. In Article V, it states that “Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.” The Declaration also states that “Every person may resort to the courts to ensure respect for his legal rights.” Article XVIII.

- The [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#) (1994) (Convention of Belém do Para) in Article 3 states that women have “the right to be free from violence in both public and private spheres.” It declares in Article 4(g) that a woman has “The right to simple and prompt recourse to a competent court for protection against acts that violate her rights...” Article 7 notes that States parties must exercise due diligence to prosecute, punish and prevent such violence, and “...include in their domestic legislation penal,

civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary...”

- The [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (2003) (The Maputo Protocol) in Article 4 mandates states parties to “...adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.”
- The [Declaration on the Elimination of Violence Against Women in the ASEAN Region](#), (2004), includes this agreement by states parties:

“To enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimisation of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody...” Section 4

Specific legislation on domestic violence

Domestic violence may be addressed in the constitutions of states, in criminal codes, in administrative provisions, in gender equality provisions, and many other contexts. Many countries include domestic violence offenses within the general criminal statutes prohibiting such acts as assault, homicide, and confinement of persons against their will. However, in this context domestic violence offenses are often ignored or treated less seriously. It is best if domestic violence is addressed in specific laws which take into account the dynamics of domestic violence, including repeat, low level injuries, and the need for urgent protective remedies.

Objectives, Definitions and Scope of Legislation

Drafting the legislative preamble

The legislative preamble sets the stage for the entire piece of legislation. It should include basic principles of women's human rights which are described in international human rights instruments, declarations and regional instruments, above.

Contents of legislative preamble

A legislative preamble to a law on domestic violence should:

- Define discrimination against women and girls as a restriction based upon sex which impairs the rights of women and girls. ([United Nations Handbook for legislation on violence against women](#), 3.1.1 (hereinafter UN Handbook)).
- State that the legislation should be comprehensive and criminalize all forms of violence against women. ([UN Handbook](#), 3.1.2.)
- State that there may be no customary or religious justifications for domestic violence. ([UN Handbook](#), 3.1.5; and [the Report of the Special Rapporteur on violence against women, its causes and consequences, a framework for model legislation on domestic violence, 1996, E/CN.4/1996/53/Add.2](#), (hereinafter the UN Model Framework,) para.8).
- State that the law will protect all women and girls. ([UN Handbook](#) 3.1.3.)

For example, one of the first articles of the [Maria da Penha Law \(2006\) of Brazil](#) (hereinafter law of Brazil) states that:

“All women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement.” Article 2

- State that the root cause of violence is the subordinate status of women and girls in society. ([General Recommendation 19](#), Paragraph 11; [UN Secretary-General's study on violence against women](#), para.30; [Other Causes and Complicating Factors](#), StopVAW, The Advocates for Human Rights; and [The International Legal Framework](#), StopVAW, The Advocates for Human Rights)
- State that the main principles of the legislation are to ensure the safety of the complainant/survivor and to provide accountability for the perpetrator. ([Drafting Domestic Violence Laws](#), StopVAW, The Advocates for Human Rights; and [United Nations Model Legislation](#), StopVAW, The Advocates for Human Rights.)

Definition of domestic violence

- Legislation should include a broad definition of domestic violence that includes physical, sexual, psychological and economic violence.

Drafters should consider limiting the intervention of the criminal justice system and order for protection courts to cases involving physical violence, because the inclusion of psychological and economic violence in the definition of domestic violence has in some cases had the unintended consequence of creating opportunities for perpetrators to claim psychological or economic abuse against their victims. For example, an angry or disgruntled violent abuser may seek protection measures against his wife for using property owned by him. Or, a perpetrator may claim that physical violence is an appropriate response to an act he sees as economically disadvantageous to himself. Government intervention in the form of orders for protection and criminal sanctions for offenders may have unintended harmful consequences for the victim in many cases of mental or psychological abuse. Also, claims of psychological and economic violence may be very difficult to prove in legal proceedings.

In 2008, a group of experts at meetings convened by the United Nations recommended that “It is therefore essential that any definition of domestic violence that includes psychological and/or economic violence is enforced in a gender-sensitive and appropriate manner. The expertise of relevant professionals, including psychologists and counselors, advocates and service providers for complainants/survivors of violence, and academics should be utilized to determine whether behavior constitutes violence.” ([UN Handbook](#), 3.4.2.)

(See: [UN Model Framework](#), II3, which urges States to adopt a broad definition of the acts of domestic violence, in compatibility with international standards; and [Gender-Based Violence Laws in Sub-Saharan Africa](#), (2007), p. 52.)

The [Law on Protection Against Domestic Violence \(2005\) of Bulgaria](#) (hereinafter law of Bulgaria) states:

“Domestic violence is any act of physical, mental or sexual violence, and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or have had family or kinship ties or cohabit or dwell in the same home.” Chapter 1, S. 2

The [Domestic Violence Act \(1998\) of South Africa](#) (hereinafter law of South Africa) includes a definition of domestic violence which contains the following clause: “...any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health, or well-being of the complainant.” Sec.1(viii)(j) The legislation then describes particular acts of abuse, such as economic abuse and emotional, verbal, and psychological abuse, in more detail.

If a domestic violence law contains a detailed description of prohibited behaviors, it may limit judicial bias. (See: [Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices \(2009\)](#))

Drafters should consider, however, that when a detailed list of acts of abuse is included in legislation, it may also have the effect of excluding some unanticipated abusive behavior from legal sanctions.

The law of [Brazil](#) defines domestic abuse as “any action or omission based on gender that causes the woman’s death, injury, physical, sexual or psychological suffering and moral or patrimonial damage.” It includes detailed descriptions of the proscribed behaviors:

Article 7. The forms of domestic and family violence against women, are, among others:

I - physical violence, understood as any behavior that offends the woman’s bodily integrity or health;

II - psychological violence, understood as any behavior that causes emotional damage and reduction of self-esteem or that harms and disturbs full development or that aims at degrading or controlling the woman’s actions, behaviors, beliefs and decisions, by means of threat, embarrassment, humiliation, manipulation, isolation, constant surveillance, constant pursuit, insult, blackmail, ridiculing, exploitation and limitation of the right to come and go or any another means that causes damage to the woman’s psychological health and self-determination;

III - sexual violence, understood as any behavior that forces the woman to witness, maintain or participate in unwanted sexual intercourse, by means of intimidation, threat, coercion or the use of force; that induces the woman to commercialize or to use, in any way, her sexuality, that prevents her from using any contraceptive method or that forces her to marriage, pregnancy, abortion or prostitution, by means of coercion, blackmail, bribe or manipulation; or that limits or annuls the exercise of her sexual and reproductive rights;

IV – patrimonial violence, understood as any behavior that constitutes retention, subtraction, partial or total destruction of the woman’s objects, working instruments, personal documents, property, assets and economic rights or resources, including those intended to satisfy her needs;

V - moral violence, understood as any behavior that constitutes slander, defamation or insult.

The [Domestic Violence Act \(1994\) of Malaysia](#) (hereinafter law of Malaysia) states:

"domestic violence" means the commission of any of the following acts:

- (a) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury;*
- (b) causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;*
- (c) 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;*
- (d) confining or detaining the victim against the victim's will; or*
- (e) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, by a person against—*
 - (i) his or her spouse;*
 - (ii) his or her former spouse;*
 - (iii) a child;*
 - (iv) an incapacitated adult; or*
 - (v) any other member of the family..."* Part I, 2

The Protection of Women From Domestic Violence Act (2005) of India (hereinafter law of India) defines domestic violence as follows:

3. *Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -*

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration. Chapter II, 3

(See: [What Is Domestic Violence](#), StopVAW, The Advocates for Human Rights; [Forms of Domestic Violence](#), StopVAW, The Advocates for Human Rights: and [Family Violence: A Model State Code](#), USA, 1994.)

- Legislation should include the following provision in a definition of domestic violence: “No marriage or other relationship shall constitute a defence to a charge of sexual domestic violence under this legislation.” ([UN Handbook](#), 3.4.3.1)
- Drafters should consider including a definition of domestic violence as a course of conduct. For example, [The Domestic Violence Act \(2007\) of Sierra Leone](#) (hereinafter the law of Sierra Leone) contains the following provision:

4.(1) A single act may amount to domestic violence.

(2) A number of acts that form a pattern of behaviour may amount to domestic violence even though some or all of the acts when viewed in isolation may appear minor or trivial. Part II 4

(See also: the [Combating of Domestic Violence Act \(2003\) of Namibia](#) (hereinafter law of Namibia) Part I 2 (3) and (4).)

- Legislation should include certain acts which have only recently come to be recognized as serious threats to the complainant/survivor, and which may not be included in criminal law provisions, such as stalking, sometimes called harassment, and acts involving the latest forms of technology.

For example, the law of [Sierra Leone](#) includes the following:

“...harassment means sexual contact without the consent of the person with whom the contact is made, repeatedly making unwanted sexual advances, repeatedly following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes-

(a) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be;

(b) repeatedly making telephone calls or inducing a third person to make telephone calls to the harassed person, whether or not conversation ensues;

(c) repeatedly sending, delivering or causing the delivery of letters, telegram, packages, facsimiles, electronic mail or other objects or messages to the harassed person’s residence, school or workplace, or;

(d) engaging in any other menacing behaviour;” Part 1, 1

- See: [Respect, Protect, Fulfill: Legislating for Women’s Rights in the Context of HIV/AIDS, Module 2: Domestic Violence](#), p. 2-4.

- Legislation should define stalking as a pattern of harassing or threatening behaviors. Naming these behaviors "stalking" is useful in a number of ways. First, the stalking itself, and not just the assault which often results, is a form of violence. The batterer is taking specific actions, such as calling or appearing at a place of work, that are designed to intimidate and coerce his former partner. Second, the term "stalking" identifies a pattern of behaviors that often leads to serious or fatal attacks. Identifying the pattern of behaviors can therefore be useful in taking steps to prevent an assault. Third, naming this pattern of behaviors helps to convey the seriousness of these behaviors. Individually, the acts that constitute stalking, such as telephone calls or texting, may appear to be relatively innocent. Taken together, however, they indicate the presence of a severe threat to the victim.

The increased use of technology in society today has created more opportunities for stalkers to track their victims. Digital stalking and electronic monitoring are two forms of stalking used to track a victim through technology. Stalkers may trace a persons' computer and internet activity, send threatening e-mail or electronic viruses.

(From: [Stalking](#), StopVAW, The Advocates for Human Rights. See: Bortel, Angela, "[Technology and Violence against Women](#)," StopVAW, The Advocates for Human Rights; [Minnesota, USA Statute 609.749](#); Lemon, Nancy K.D., "[Domestic Violence and Stalking: A Comment on the Model Anti-Stalking Code Proposed by the National Institute of Justice](#) (1994); and Minnesota Coalition for Battered Women, "[Facts About Intimate Partner Stalking in Minnesota and the United States](#)" (2009).)

Scope of persons protected by law

Drafters should strive to make the scope of persons to be protected by a domestic violence law clear and reflective current reality. The scope of domestic violence legislation has, in many countries, been expanded to include not only married couples but those who are or have been in intimate relationships, as well as family members and members of the same household. ([UN Handbook](#), 3.4.2.2.)

For example, the [Organic Act on Integrated Protection Measures against Gender Violence \(2004\) of Spain](#) (hereinafter law of Spain) defines a domestic relationship broadly, going beyond intimate or formerly intimate relationships to include those between family or household members and minors or disabled individuals under guardianship or custody.

Promising practice: The law of [South Africa](#), which specifically includes same-sex relationships, and which includes all individuals who are dating or have dated in the scope of persons to be protected by the domestic violence law:

“domestic relationship” means a relationship between a complainant and a respondent in any of the following ways:

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

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

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

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

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

(f) they share or recently shared the same residence...”¹(vii) [emphasis added]

The [Anti-Violence Against Women and their Children Act \(2004\) of the Philippines](#) (hereinafter the law of Philippines) includes a dating relationship in the scope of relationships to be covered under its domestic violence law:

*As used in this Act, (a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman **with whom the person has or had a sexual or dating relationship...**" (Section 3) [emphasis added]*

The Philippines' law defines a dating relationship as follows:

"Dating relationship" refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship. Section 3, D 4 (e)

Promising practices: [The Law Regarding Elimination of Violence in the Household \(2004\) of Indonesia](#) (hereinafter law of Indonesia) includes “the individual working to assist the household and living in the household” within the scope of persons to be protected. Chapter I, Article 2. The [Domestic Violence Act \(2007 of Ghana\)](#) (hereinafter the law of Ghana) includes a complainant who “is a house help in the household of the respondent...” in the scope of a domestic relationship to be covered under the law. Section 2 (i)

(See: [Dating Violence](#), StopVAW, The Advocates for Human Rights; [Family Violence: A Model State Code](#), Sec 102; and [Sample National Domestic Violence Laws](#), StopVAW, The Advocates for Human Rights.)

Rights of Complainants/Survivors

Rights of complainant/survivors

- Legislation should include a statement of the rights of complainant/survivors. It must promote complainant/survivor safety, agency, and assistance, and prevent the re-victimization of the complainant/survivor. It should remove barriers that may prevent them from seeking safety, such as concerns about child custody, access to shelters, and legal aid.

(See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009); and

- [Combating violence against women: minimum standards for support services \(2008\)](#).

For example, [Spain](#)'s law contains a guarantee of victim's rights. Article 17

- The statement of rights should inform the complainant/survivor of legal remedies (such as the order for protection and ex parte order for protection) and the support services offered by the state.

Promising practice: The law of [Spain](#) mandates that disabled persons receive information about legal and support remedies "in a format that is accessible and understandable". Article 18

- Legislation should provide that the police must perform certain duties to support the rights of complainant/survivors. See the section below on [Duties of police](#).
- Legislation should provide that services are not conditional on cooperation with authorities.
- Support services should include transport to shelters, emergency services, and other support programs for complainants/survivors and their families. Legislation should state that the victim's consent is required before being transported to a shelter. For example, the [Law on Preventing and Combating Violence in the Family \(2007\) of Moldova](#) (hereinafter law of Moldova) states in Article 14 that victims may be placed in emergency shelters upon the victim's request, and if the victim is a minor, with the consent of the minor's legal representative.
- Legislation should name an agency or agencies which are responsible for victim services and should clearly describe the responsibilities of the agency or agencies.

- Legislation should require that the court administration system that handles cases of domestic violence maintain a staff which will provide assistance to domestic violence victims. See: [Family Violence: A Model State Code](#).

Promising practice: The law of [Brazil](#) calls for the creation of Courts of Domestic and Family Violence against Women, which should rely on a “multidisciplinary assistance team made up of professionals specializing in the psychosocial, legal and health areas.” This team is then to provide expert advice to judges, the Prosecutor’s Office and the Public Defense. (Articles 29, 30)

Promising practice: [Spain’s](#) law, which includes specialized Violence against Women courts wherein all employees from judges to court clerks must receive training on issues of gender violence and which focuses on “the vulnerability of victims.” (Article 47)

- Legislation should provide for economic assistance to complainant/survivors. Economic independence is a necessity for complainant/survivors to escape situations of violence. Legislation should provide for both short-term and longer-term economic and employment assistance.

For example, the law of [Brazil](#) provides for assistance to complainant/survivors by a court determination of the complainant/survivor’s inclusion in federal, state, and municipal assistance programs, and assures the complainant/survivor priority status to receive a job transfer if the complainant/survivor is a civil servant, or guarantees his or her employment for up to 6 months if the complainant/survivor must leave his or her place of work. (Article 9)

Promising practice: The law of [Spain](#) contains a comprehensive system of aid to victims: employment rights in Article 21, economic subsidies in Article 27, and priority access to subsidized housing in Article 28.

- See: the [UN Model Framework](#), which outlines a “statement of victim’s rights,” and [Victim Protection, Support and Assistance](#), StopVAW, The Advocates for Human Rights.

Other important legislative provisions for assistance to complainant/survivors

- Legislation should require a free, 24-hour hotline that is accessible from anywhere in the country and staffed by persons trained in domestic violence issues. ([Crisis Centers and Hotlines](#), StopVAW, The Advocates for Human Rights.)
- Legislation should mandate a shelter/safe space for every 10,000 members of the population, located in both rural and urban areas, which can accommodate complainants/survivors and their children for emergency stays and which will help them to find a refuge for longer stays. ([UN Handbook](#), 3.6.1; and [Shelters and Safehouses](#), StopVAW, The Advocates for Human Rights)
- Legislation should require long-term housing assistance for complainant/survivors as they work to attain economic independence from the perpetrator.

Promising practice: [Title VI of the Violence Against Women Act \(Reauthorized in 2005\)](#), United States (hereinafter VAWA, USA) provides that a complainant/survivor cannot be evicted from public housing because there have been incidents of domestic violence at her residence. Further, the complainant/survivor may not be denied public housing assistance due to domestic violence, her landlord may not claim that domestic violence incidents constitute “good cause” to terminate her lease, and the lease itself may be divided so that the joint tenant perpetrator may be evicted and the complainant/survivor tenant may retain possession of the lease. A complainant/survivor may also change jurisdictions within the public housing program to protect the health and safety of herself and her family, without violating the terms of the lease. This law protects complainant/survivors when one incident of domestic violence, dating violence, or stalking occurs against the complainant/survivor. However, if the landlord demonstrates that there is an actual or imminent threat to other tenants or to those employed at the property, then the complainant/survivor’s tenancy may be terminated. 42 U.S.C. §1437

- Legislation should mandate a crisis centre for every 50,000 population, with trained staff to provide support, legal advice, and crisis intervention counseling for all complainants/survivors, including specialized services for particular groups such as immigrants. ([UN Handbook](#), 3.6.1; and [Crisis Centers and Hotlines](#), StopVAW, The Advocates for Human Rights)
- Legislation should mandate access to free-of charge health care for immediate injuries and long-term care including sexual and reproductive health care, emergency contraception and HIV prophylaxis in cases of rape.

For example, the law of [Brazil](#) contains the following provision:

The assistance to the woman in a situation of domestic and family violence will include access to benefits resulting from scientific and technological development, including emergency contraception services, prophylaxis of Sexually Transmitted Diseases (STDs) and of the Acquired Immune-Deficiency Syndrome (AIDS) and other necessary and appropriate medical procedures in the cases of sexual violence. Chapter 2, Article 9, Paragraph 3

- Legislation should mandate protocols and trainings for health care providers, who may be the first responders to domestic violence. Careful documentation of a complainant/survivor's injuries will assist a complainant/survivor in obtaining redress through the legal system. In countries with mandatory reporting laws, legislation should require mandatory reporters to provide a full explanation of laws and policies to the survivor when a report is required.

Promising practice: The law of [Philippines](#) requires health care providers, therapists, and counselors who know or suspect that abuse has occurred to record the victim's observations and the circumstances of the visit, properly document all physical, emotional, and psychological injuries, provide a free medical certificate concerning the exam, and to retain the medical records for the victim. They must also provide the victim with "immediate and adequate" notice of their rights and remedies under Philippine law, and the services which are available to them. Section 31

The [Noor Al Hussein Foundation's Institute of Family Health](#) (IFH) has developed a "Training Manual for Private Health Care Providers in Management of Victims of Violence against Women." The manual provides information on detection, diagnosis, and referral of victims to support services. According to the IFH, the guide is the first of its kind in the region to be available in Arabic and is already being used by medical professionals at nine private hospitals in Jordan.

(See also: [Role of Health Care Providers](#), StopVAW, The Advocates for Human Rights; [Confidentiality and Support](#), StopVAW, The Advocates for Human Rights; [Screening and Referral](#), StopVAW, The Advocates for Human Rights; [Documentation and Reporting](#), StopVAW, The Advocates for Human Rights; and [Creating a Health Care Response](#), StopVAW, The Advocates for Human Rights.)

- Aid, including shelter, clothing and food, should also be provided for the children of complainant/survivors. ([UN Handbook](#), 3.6.1)
- Legislation should include provisions which provide for restitution or compensation to the complainant/survivor. ([UN Handbook](#) 3.11.5)

For example, the law of [Malaysia](#) states that a victim of domestic violence is entitled to compensation in the court's discretion:

Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.

(2) The court hearing a claim for such compensation may take into account—

(a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered ;

(b) the cost of medical treatment for such injuries;

(c) any loss of earnings arising therefrom;

(d) the amount or value of the property taken or destroyed or damaged;

(e) necessary and reasonable expenses incurred by or on behalf of the victim when the victim is compelled to separate or be separated from the defendant due to the domestic violence, such as—

(i) lodging expenses to be contributed to a safe place or shelter;

(ii) transport and moving expenses;

(iii) the expenses required in setting up a separate household which, subject to subsection (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence, or alternative residence, as the case may be, for such period as the court considers just and reasonably necessary. (Part III,10)

State agency to establish aid centres

- Legislation should mandate a state agency to establish aid centres and legislation should provide for the funding of the services. For example, the law of [Georgia](#) states that the Ministry of Labour, Healthcare and Social Protection shall determine minimal standards for temporary shelters for victims and batterer intervention centres. Article 21.

For example, in Article 6, the law of [Albania](#) describes the responsibilities of the Ministry of Labour, Social Affairs and Equal Opportunities as follows:

1. *The lead responsible authority has the following duties:*
 - a. *To develop and implement national strategies and programmes to offer protection and care to the victims of domestic violence;*
 - b. *To finance and co-finance projects designed for the protection and consolidation of family and for the care of victims of domestic violence;*
 - c. *To assist the set up of support structures and all of the necessary infrastructure to support and fulfill all the needs of the persons subject to domestic violence, including financial assistance as well as social and health services pursuant to the law;*
 - ç. *To organise training sessions on domestic violence with social service employees at any local government unit, police structures and employees of NPOs licensed to offer social services;*
 - d. *To maintain statistical data on the level of domestic violence;*
 - dh. *To support and supervise the set up of rehabilitation centres for domestic violence victims;*
 - e. *To support and supervise the set up of rehabilitation centres for the perpetrators of domestic violence;*
 - ë. *To license NPOs that will provide social services to victims and perpetrators.*

- Accreditation standards for assistance centres should be developed in consultation with NGOs and advocates working directly with complainants/survivors.

Promising practice: The [Bundesgesetz zum Schutz vor Gewalt in der Familie \(1997\) of Austria](#) (hereinafter law of Austria), where intervention centres are established and financed by government Ministry but run by women's non-governmental organizations. These organizations have the depth of knowledge and experience required to provide sensitive and comprehensive support to complainants/survivors and their dependents.

(See: [UN Model Framework](#), VII B)

[The Power to Change](#), a resource to help victims of domestic violence through support groups was created by women's rights advocates in Britain, Estonia, Hungary, Italy, and Portugal. The manual outlines a program model for creating self-help and support groups for women who have been in abusive relationships. The resource provides detailed information on how to establish such support groups by including checklists and outlining the responsibilities of facilitators, who play a key role in ensuring that the groups are safe, supportive, and inclusive.

The guide was created after two years of work by women's rights organizations throughout Europe and has been tested through consultation with practitioners and service users across the five countries. It is available in five languages. Building upon the experience and expertise of the involved organizations, [The Power to Change](#) is intended to be used as a practical tool for women's rights groups and existing specialist services for victims of domestic and sexual violence, as well as more informal self-help groups and domestic violence experts working in other organizations, such as health and social care. The organizations are: [Women's Aid](#) in United Kingdom, [NANE](#) in Hungary, [Associazione Artemisia](#) in Italy, [MTÜ Naiste Varjupaik](#) in Estonia and [Associação de Mulheres Contra a Violência](#) in Portugal. The guide was funded by the European Commission's [Daphne](#) initiative.

- See: [Women's Aid](#), (2008) "Guide to Running Support Groups". Available in [English](#); [Estonian](#); [Hungarian](#); [Italian](#); and [Portuguese](#);

Confidentiality for complainant/survivors

The law should prohibit the disclosure of information about specific cases of domestic violence to government agencies without the fully informed consent of a complainant/survivor, who has had the opportunity to receive advice from an advocate, unless the information is devoid of identifying markers.

For example, the law of [Philippines](#) states:

Confidentiality. – All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential and all public officers and employees and public or private clinics to hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court. Section 44

Advocates

- Legislation should ensure that complainants/survivors have access to advocates who will be present and advise them through the legal process, including filing for orders of protection, accompanying them to court, and filing for restitution or compensation available by statute. Legislation should provide that these advocates must be trained in counseling and in domestic violence issues and in the law and practice of their country.
- Legislation should reflect the importance of the confidentiality of the relationship between an advocate and a complainant/survivor.

For example, the law of [Georgia](#) states that “*The information on state of physical and psychological status of the victim shall be confidential and its disclosure shall be permitted only in cases provided by law.*” Article 19

(Fuller, Rana SA, “[The Importance of Confidentiality Between Domestic Violence Advocates and Domestic Violence Victims](#),” StopVAW, The Advocates for Human Rights)

- For information on advocate/complainant/survivor privilege, see *Family Violence: A Model State Code*; Sec. 216; available in [English](#); and *Advocacy Guidelines*, StopVAW, The Advocates for Human Rights; available in [English](#).
- For more on the relationship of advocates and complainant/survivors see: Davies, Jill (2008) “When Battered Women Stay...Advocacy Beyond Leaving”; available in [English](#); and
- National Prosecuting Authority of South Africa (2005) *Uniform Protocol for the Management of Victims, Survivors, and Witnesses of Domestic Violence and Sexual Offences*; available in [English](#).

Coordinated Community Response and Implementation of Laws

Coordinated Community Response

Coordinated community response is an intervention strategy developed by the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota, USA. This strategy, often called the "Duluth model," is a "system of networks, agreements, processes and applied principles created by the local shelter movement, criminal justice agencies, and human service programs that were developed in a small northern Minnesota city over a fifteen year period. It is still a project in the making." (*From: Ellen Pence & Martha McMahon, [A Coordinated Community Response to Domestic Violence](#) (1999), The National Training Project, Duluth, Minnesota*)

Although there is no one model that will work in every context, the model used by DAIP in Duluth is one of the most successful coordinated community response projects and has been adapted for use in communities in many different parts of the world. (See: [Adapting the Duluth Model](#), StopVAW, The Advocates for Human Rights; and [Coordinated Community Response](#), StopVAW, The Advocates for Human Rights.)

Legislation should include provisions that require agency collaboration and communication in addressing domestic violence. NGO advocates who directly serve domestic violence victims should have leadership roles in such collaborative efforts. When police, judicial officials, NGOs that provide direct service to victims of violence, and medical providers coordinate their efforts to protect battered women and hold batterers accountable, these efforts are more successful. Coordination helps to ensure that the system works faster and better for victims; that victims are protected and receive the services they need; and that batterers are held accountable and cease their abusive behavior.

([Council of Europe General Recommendation Rec\(2002\)5](#), (para. 27); [Benefits of Coordination](#), StopVAW, The Advocates for Human Rights; [Goals and Strategies of Intervention](#), StopVAW, The Advocates for Human Rights; and [Community Response Participants](#), StopVAW, The Advocates for Human Rights)

See section of this module on [Implementation of Laws](#).

Many nations have provisions which mandate cooperation by state agencies.

For example, one of the objectives of [Albania's](#) law is:

a. To set up a coordinated network of responsible authorities for protection, support and rehabilitation of victims, mitigation of consequences and prevention of domestic violence[.]

The law of [Philippines](#) includes the following provisions on community collaboration:

“SEC. 39. Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC). In pursuance of the abovementioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their children, hereinafter known as the Council, which shall be composed of the following agencies:

Department of Social Welfare and Development (DSWD); National Commission on the Role of Filipino Women (NCRFW); Civil Service Commission (CSC); Council for the Welfare of Children (CWC); Department of Justice (DOJ); Department of the Interior and Local Government (DILG); Philippine National Police (PNP); Department of Health (DOH); Department of Education (DepEd); Department of Labor and Employment (DOLE); and National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives...

SEC. 42. Training of Persons Involved in Responding to Violence Against Women and their Children Cases. – All agencies involved in responding to violence against women and their children cases shall be required to undergo education and training to acquaint them with:

the nature, extent and causes of violence against women and their children; the legal rights of, and remedies available to, victims of violence against women and their children; the services and facilities available to victims or survivors; the legal duties imposed on police officers to make arrest and to offer protection and assistance; and techniques for handling incidents of violence against women and their children that minimize the likelihood of injury to the officer and promote the safety of the victim or survivor...”

[Brazil's](#) law includes collaboration with law enforcement, the media and educational institutions. Importantly, it includes NGOs in the language of the law:

The public policy aimed at restraining domestic and family violence against women will be implemented by means of an integrated set of actions by the Federal Union, the States, the Federal District and the Municipalities and non-government actions, according to the following guidelines:

I - operational integration of the Judiciary Branch, the Prosecutor's Office and the Public Defender with the areas of public security, social assistance, health, education, work and housing...

IV - implementation of specialized police assistance for women, in particular in the Police Offices for Assistance to Women;

V - promotion and holding of educative campaigns to prevent domestic and family violence against women, directed to the school public and society in general, and dissemination of this Law and of the instruments of protection of women's human rights;

VI – establishment of accords, protocols, adjustments, terms or other instruments of promotion of partnership between government bodies or between them and non-government entities, with a view to the implementation of programs to eradicate domestic and family violence against women;

VII - permanent training of the Civil and Military Police, Municipal Guard, Fire Brigade and of the professionals belonging to the agencies and areas listed in item I, on gender and race or ethnicity issues;

VIII - promotion of educational programs that disseminate ethical values of unrestricted respect to the dignity of the human person with a gender and race or ethnicity perspective;

IX - emphasis, in the school syllabus of all levels of education, on contents related to human rights, gender and race or ethnicity equity and the problem of domestic and family violence against women. Chapter 1, Article 8 [emphasis added]

[Spain's](#) law states that “*The female victims of gender violence are entitled to receive care, crisis, support and refuge, and integrated recovery services...Such services will act in coordination with each other and in collaboration with the Police, Violence against Women Judges, the health services, and the institutions responsible for providing victims with legal counsel, in the corresponding geographical zone.*” Art. 19

Promising practice: [Spain's](#) law also provides for funding and evaluation of these coordination procedures. Article 19

[Moldova's](#) law calls for local public administration authorities to cooperate with international organizations and civil society. Article 5

Implementation of a coordinated community response

Legislation should include the following strategies in order to achieve a coordinated community response:

- Ensure safety of the survivor as the primary and central concern through an effective police response, emergency orders for protection and access to emergency shelter;
- Mandate crisis intervention services (hotlines, legal advocacy, medical care, financial and housing assistance);
- Include provisions for an effective and coordinated justice system response, such as an appropriate and timely police response, appropriate prosecutorial and judicial response, coordination of information between all legal actors, victim advocates, and enforcement of orders for protection;
- Provide for an appropriate response to the abuser, which consistently hold abusers accountable, including arrest and appropriate sanctions;
- Provide for follow-up services for complainant/survivors such as counseling, support groups, services for children, abuser treatment services, assistance with employment, housing, health care and child care;
- Mandate training of personnel in all systems; and
- Include provisions which mandate coordination and monitoring of interventions such as advisory committees or councils, court watch, data collection and reporting, and accountability systems.

([Goals and Strategies of Interventions](#), StopVAW, The Advocates for Human Rights)

CASE STUDY: Engaging traditional leaders in combating domestic violence in Cameroon

Gender-based violence in Cameroon is manifested by sexual violence, harmful practices, and domestic violence. Women in Cameroon experience physical and psychological domestic violence on a regular basis. This violence is the result of a belief in women's subordinate status, the shame involved in reporting the violence, and the lack of an effective state response to the violence. In 2007, a Cameroonian NGO, The Centre for Human Rights and Peace Advocacy (CHRAPA), sponsored by The UN Trust Fund in Support of Actions to Eliminate Violence Against Women, UNIFEM, began a multi-level project to address these concerns. The project consisted of: establishing a program of legal assistance to victims; educating the public and certain target groups such as police, women's group leaders, and traditional authorities; endeavoring to pass a draft law against gender-based violence; and carrying out a baseline survey in the project area in order to obtain statistics on VAW, including its forms, frequency, and perpetrators.

The project team employed a participatory management system which involved all of the stakeholders in planning their roles to execute the project. This created an informed and vested group of stakeholders who supported the goals of the project. Stakeholder involvement by one group in particular was found to create a positive outcome. A Network of Traditional Authorities, or fons, was formed. These area chiefs determined strategies to end gender-based violence in their area and implemented restitution for victims of gender-based violence. Project managers reported that these traditional authorities, who were once the custodians of violent practices against women, are now calling upon their communities to refrain from these practices. The fons have continued to hold traditional meetings to raise awareness, to monitor achievements, and to deal with cases of abuse. Violence against women is a regular agenda item at these traditional meetings, and CHRAPA keeps the fons up-to-date on issues of violence against women.

See the section of this Module on [Implementation of Laws](#).

Promising Practice: [Poland's "Safer Together"](#) program to implement its National Programme Against Domestic Violence. "Safer Together" calls for improving cooperation between organizations to assist victims and aims to develop a consistent system of procedures to exchange information among all entities involved in counteracting domestic violence.

The [UNODC Southern Africa](#) and the South Africa Department of Social Development created one-stop service centres for domestic violence victims and their children. These centres integrate government and community services to provide aid to victims and to promote prevention programs, including radio shows, school programs, and work with

young male prison inmates. ([“Project Counters Domestic Violence in South Africa,”](#) UNODC Update No. 4 (2005))

Batterers’ intervention programs

- When legislation provides for educational or rehabilitative programs for violent offenders, or batterers’ intervention programs, it must ensure that the safety of the complainant/survivor is paramount, and that such sentences are carefully monitored by the judge involved. (See also the Module on [Partnering with Men and Boys](#) to Prevent Violence Against Women and Girls). If a batterer is sentenced only to an intervention program, and his attendance or behavioral changes are not monitored, the implementation of the law on domestic violence will be seriously impaired. ([Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice: Resource Manual](#), p. 53; and [Batterers’ Intervention Programs](#), StopVAW, The Advocates for Human Rights)
- Legislation which allows batterers’ intervention programs as an option for violent offenders must ensure that such programs do not replace sanctions for violations of orders for protection or for acts of violence. Such programs must be carefully regulated so as not to create excuses for offenders and so that survivors are not required to have contact with offenders. ([UN Handbook](#), 3.11.6; law of [Spain](#); and [Family Violence: A Model State Code](#) Sec 508.)

For example, the law of [Georgia](#) places the responsibility for rehabilitation centres for abusers with the a specific Ministry, and states that “*Such centres shall meet standards set by the Ministry of Labour, Healthcare and Social Protection for institutions of such kind and ensure temporary placement, psychological assistance and treatment of abusers.*” Article 20

For an example of detailed standards for program structure, accountability, curriculum and administrative guidelines, see: [Virginia Standards for Batterer Intervention Programs](#), for the state of Virginia, USA, last rev. 04/09.

Promising practice: A batterer’s intervention program which is provided only where sufficient services to complainant/survivors are funded; and where the program is consistently supervised by victim advocates for risks to the safety of the complainant/survivor.

CASE STUDY: Mandated court compliance in batterer intervention programs affects program completion and re-arrest rates.

A study of the court review process for men referred to batter intervention programs by the Domestic Violence Court in Pittsburgh, Pennsylvania, USA, found that strict standards for compliance and immediate consequences for non-compliance increased attendance at and completion of the batterer intervention program. The study also concluded that completion of the program, coupled with the mandatory court review for compliance, lowered recidivism.

At the time of the study, about 20-30% of men arrested on domestic violence charges in Pittsburgh were referred to batterer intervention programs, but records indicated that many men did not, in fact, report to the program, and of those who did, nearly one-half failed to complete the program. For this study, the men who were referred to batterer counseling had to reappear in court in 30 days to verify their participation in the batterer intervention program, and again after 60 days to verify that they had completed the program. If the court did not receive evidence of compliance, or if evidence of non-compliance was received, a warrant for the arrest of the batterer was issued.

When there were immediate and sure consequences to non-compliance, the number of men who did not complete the program dropped from one-half to one-third. And, those who completed the program were half as likely to be re-arrested for assault as those not referred to the program.

See: Gondolf, Edward W. (1998), [The Impact of Mandatory Court Review on Batterer Program Compliance: An evaluation of the Pittsburgh Municipal Courts and Domestic Abuse Counseling Center](#).

Implementation of domestic violence laws

Many countries have enacted domestic violence legislation but the law remains unimplemented. See for example, country reports in [Africa for Women's Rights: Ratify and Respect! Dossier of Claims](#) (2010).

A number of provisions are vital to the implementation of a new domestic violence law and should be included in legislation:

- Legislation should name a state body as responsible for implementing the domestic violence law and a separate state body as responsible for monitoring the domestic violence law. For specific recommendations, see [UN Handbook](#) 3.3; and the sections on [Implementation of Legislation](#) and [Monitoring of Legislation](#) on Violence against Women and Girls in this Knowledge Module.

For example, the law of [Spain](#) provides for a State Observatory on Violence against Women to provide advice and analysis of gender violence matters, prepare reports and proposals for action, and supervise collaboration of the institutes involved. (Article 30)

The law of [Guyana](#) names the Ministry of Labour, Human Services and Social Security responsible for public awareness and educational programs and for conducting studies and publishing reports on domestic violence in Guyana. (Part IV 44)

- Legislation should state that the state body or bodies responsible for implementing the law must work in collaboration with NGOs that provide direct service to domestic violence victims, police, prosecutors, judges, the health sector, and the education sector, to develop regulations, protocols, guidelines, instructions, directives, and standards, including standardized forms, so that the legislation may be implemented in a comprehensive and timely manner. [UN Handbook](#) 3.2.6.

The law of [Albania](#) delegates clear responsibilities and duties to its Ministries in the implementation of the law:

“Duties of other Responsible Authorities

1. Ministry of the Interior has the following duties:

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

2. Ministry of Health shall set up necessary structures to provide health care in domestic violence cases at the emergency units and at the health care centres in municipalities and communes, with a view to:

- a. Offer at any time medical and psychological help to domestic violence victims,*
- b. To carry out necessary examinations at any time at respective public health institutions,*
- c. To record domestic violence cases at the appropriate medical documentations, as approved by the Ministry of Health*
- ç. To provide the victim with the respective medical report*
- d. To guide and refer the victim to other support and protection domestic violence services*

3. Ministry of Justice has the following duties:

- a. To train the medico-legal experts in recognizing, diagnosing, evaluating and reporting on domestic violence and child abuse injuries;*
- b. To train the bailiffs on their duty to serve protection orders immediately and to ensure their implementation under Article 23 point 6 and to take appropriate action;*
- c. To budget for free legal assistance mandated under this act and ensure a sufficient number of trained lawyers to provide said assistance.*

4. Local authorities (municipalities, communes) have the following duties:

- a. To engage in setting up social services structures for domestic violence cases
- b. To install regional 24-hour toll free telephone line, which will then establish links to local units, police, medical emergency units and NPOs, thereby coordinating their actions
- c. Establish social and rehabilitation centres for victims and perpetrators and coordinate efforts with existing ones, giving priority to specialised centres in respective fields. Article 7

Duties of all responsible authorities

1. Each of responsible authorities has the duty to set up the necessary structures and to nominate those individuals responsible for the implementation of this law. The Ministry of LSAEO shall supervise fulfilment of this obligation. Article 8

Promising practice: The [Violence in the Family Prevention and Protection of Victims Laws \(2000 and 2004\) of Cyprus](#) (hereinafter law of Cyprus) established an [Advisory Committee](#) to research domestic violence, promote services for and public awareness of domestic violence, and to monitor these activities. The Advisory Committee is to be comprised of persons with knowledge and experience in the area. The Council of Ministers may also appoint a multidisciplinary group with expertise in issues relating to child victims of violence. Part III 7 (1) and (2) and 8 (1) and (2)

- Legislation should require regular training for police, judicial officials and service providers who implement the law. ([UN Handbook](#) 3.2.3; and [UN Model Framework](#) VII C, D, and E)

The draft updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice calls for trainings on relevant laws and programmes, identifying and responding to the specific needs of women victims, avoiding secondary victimization, conducting safety assessments, and the use and enforcement of protection orders. See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#) (2009).

For example, see: law of [India](#):

The Central Government and every State Government, shall take all measures to insure that the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by [The Protection of Women From Domestic Violence Act]. Ch III, 11 (b)

Promising practice: The law of [Brazil](#) requires “permanent trainings” of law enforcement and judiciary officials not only on gender issues, but also on race and ethnicity issues. Article 8

Illustrative Example: Lawyers Collective Women's Rights Initiative Produces Annual Monitoring Reports and Training Materials To Promote Implementation of the Domestic Violence Law in India

In 2005, India passed a law on domestic violence entitled "Protection of Women from Domestic Violence Act (PWDVA)." In 2006 the Lawyer's Collective Women's Rights Initiative (LCWRI) received funding from the Global Trust Fund to assist the government in implementing and monitoring the new law. This funding has allowed LCWRI to prepare [training manuals](#) and other instructive materials for judicial officers, protection officers, and others charged with implementing and monitoring the domestic violence law.

LCWRI, in collaboration with The International Center for Research on Women, also published an annual report detailing its efforts to monitor the law and evaluating the progress made over the course of the year. To date, LCWRI has published three such reports, two of which are available on [LCWRI's website](#). LCWRI received additional funding from the Global Trust Fund in 2008 to continue its work in monitoring and implementing India's domestic violence law. LCWRI works alongside other organizations that sponsored the domestic violence law to gather and analyze data from across India. Using this data, LCWRI and other organizations determine where progress has been made and where more work is needed. (See: Lawyer's Collective [Women's Rights Initiative](#); and section of this Knowledge Module on [Monitoring of Laws](#).)

- Legislation should also require adequate and sustained funding for all aspects of implementation so that the law can be effective. ([UN Handbook](#) 3.2.2)

Promising practice: the law of [Philippines](#) requires funding to implement the law. Section 45

Promising draft bill: The United States Senate draft bill (s.2279) [International Violence Against Women Act \(2007\)](#) (I-VAWA), if enacted, would provide US government financial support to programmes to end violence against women and girls around the world. I-VAWA will focus on legal reform, capacity-building, support services, professional training, the prevention of violence, and public awareness campaigns. I-VAWA was drafted by a coalition of agencies including United Nations agencies and women's NGOs in the US and other countries.

- Legislation should require creation of a national plan or strategy on domestic violence ([UN Handbook](#) 3.2.1.; see: [The UN Secretary-General's database on violence against women](#) for the National Action Plans of many countries.)
- Legislation should require data collection on domestic violence reports which is disaggregated by sex, race, age, ethnicity and other relevant characteristics. [UN Handbook](#) 3.3.2.
- Legislation should require data collection on specific aspects relating to the implementation of the new law, such as: number of orders for protection granted, denied, cancelled, appealed, etc. These should be kept and made available publicly. In addition, qualitative data about the effectiveness of orders for protection should be gathered on a regular basis from police, courts, relevant government ministries, counseling centers and shelters, and from complainant/survivors. Legislation should require that this data be compiled by the relevant government ministry and published on an annual basis. (See [UN Handbook](#) 3.3.2; the sub-section on [Monitoring of Laws](#) on Violence Against Women and Girls of this Knowledge Module and sub-section on [Conducting research, data collection and analysis](#) in Programming Essentials)
- Legislation should require public awareness programs on domestic violence. (See: law of [Spain](#); law of [India](#), Ch. III, para. 11; [UN Handbook](#) 3.5.2; and [Council of Europe General Recommendation \(2002\)5](#), Appendix, paras. 6-13)
- Legislation should require education on domestic violence for all grade levels which includes information on relevant laws. (See: [Council of Europe General Recommendation \(2002\)5](#), Appendix, 14-16; [UN Handbook](#) 3.5.3; and the law of [Spain](#), which includes detailed provisions for inclusion of information on gender violence at all levels of its educational curricula, including training of teachers. Article 4, Article 7. See also the Knowledge Module on [Education](#).)

For more detailed information on implementing laws, see the sub-section of this Knowledge Module on [Implementation of Laws](#)

Time limit between enacting and enforcing laws

The time between the enactment and enforcement of a new domestic violence law must be carefully calculated so that amendments, including amendments which are necessary to the enforcement of the new law may be quickly enacted and promulgated. ([UN Handbook](#) 3.2.7)

For example, the law of [Albania](#) states that the Council of Ministers is to issue all of the necessary secondary legislation to the implementation of the domestic violence law within 3 months of its entry into force.

CASE STUDY: Bulgarian NGOs work to get funding for domestic violence law implementation

The [Bulgarian Law on Protection against Domestic Violence](#) (LAPDV) was passed in 2005. The LAPDV provides that the State is responsible for ensuring the implementation of programs aimed at the prevention of and protection against domestic violence, as well as programs providing assistance to the victims. In 2006, the Bulgarian Council of Ministers adopted the Protection from Domestic Violence Programme. The Programme sought to address the problem of protection order enforceability, to toughen sanctions for repeat offenders, and to open a 24-hour telephone hotline and provide shelters for victims. In early 2007, domestic violence guidance for police officers was published, national and regional coordinators were chosen, and a database of cases was created. However, the services envisioned by the Program continued to be provided only by non-governmental organizations, with no regular funding from the Bulgarian government.

The process of acquiring funding from the state of Bulgaria has been difficult: not only is the funding insufficient, but the disbursement process is complex. National funding exists for the creation of domestic violence shelters, but none had been built as of 2007 from the scarce budget provided in the above-mentioned Programme, which was under a budget line for the local authorities. More funding was needed to create shelters, fund NGOs, and implement programs for both victims and perpetrators, as required under Article 5 of the LAPDV. Because the government was not assisting women with shelter or counseling, NGOs stepped in. One of these, the [Bulgarian Gender Research Foundation](#), (BGRF) is an NGO which promotes community involvement with domestic violence, including through police and legal trainings.

BGRF began a campaign to achieve legally-mandated funding for domestic violence services so that the LAPDV could be implemented. BGRF and the working group on the Bulgarian domestic violence law lobbied extensively for an amendment which would explicitly provide for the financial sustainability of the law, and a fund for victims. The amendment provides for NGOs to help manage and disburse the funds which are allocated to implement the LAPDV. BGRF also invited the NGOs which provide services for victims of domestic violence to form an Alliance for Protection against Domestic Violence (the Alliance). In 2008, as they lobbied for the amendment to be passed, the Alliance conducted the 16-days campaign. During the campaign, representatives of the Ministry of Justice spoke about the necessity for a special fund for domestic violence victims. This in itself was a significant victory for the Alliance, as all of the process of amendments and the forming of the Alliance had begun in that same year.

The Alliance and working group continued to press for amendments on financial sustainability. They made multiple presentations to different Bulgarian Ministries and presented complicated information about budgets and timing. They hoped that the State budget could incorporate funds for domestic violence from the second half of 2009, instead of postponing the allocation of funds for another year.

Amendments to the Law went before the Council of Ministers in January of 2009, and the Council was to decide which Ministry will disburse the funds. Genoveva Tisheva of BGRF, and the President of the Alliance, spoke to a parliamentary committee on human rights about the connection between the lack of a gender equality policy and the unwillingness of the Ministries to tackle the issue of domestic violence. Shortly after her speech, the Ministry of Labour and Social Policy asked to meet with her about the future implementation of the LAPDV and to discuss a mechanism for financing the work of the NGOs against domestic violence. However, after consultation with NGOs and the Ministry of Justice, the Ministry of Justice took on the responsibility of being the coordinating body for the implementation of the LPADV.

On June 17, 2009, the Bulgarian Council of Ministers approved several draft amendments to the Bulgarian Law on Protection against Domestic Violence, including one that stated that beginning in January of 2010, a special line item in the budget of the Ministry of Justice would fund NGO programs for victim support and other activities such as training police and monitoring legislation. It was expected that the new government and new National Assembly, in place after the national elections on 5 July 2009, would support, approve, and adopt the changes.

From the first weeks of the mandate of the new government, the BGRF and the Alliance for Protection against DV maintained their focused campaigning and lobbying for the adoption of the changes in the LPADV which would ensure the sustainability of services for victims. Thanks to this action and to the favorable attitude of the government and the new parliament, on 9 December 2009 the amendments were adopted. It is expected that from the beginning of 2010, funding for projects of NGOs working in the field of domestic violence will be in process, and will be funded by targeted budget allocations through the Ministry of Justice. The initial amount for such projects for 2010 is not high- about half a million levs- but it marks a good beginning for negotiations of the Alliance with the government on the issue. It was expected that work and negotiations on the budget allocations would continue in 2010.

Thus, sustainable funding for the work of the NGOs against domestic violence is imminent. The formation of the Alliance was a key step in this process, as it is the voice of many NGOs, and is trusted by the government. BGRF and the Alliance will continue their work to achieve an action plan, implementation of the law, and budgetary guarantees to support victims.

Civil Remedies on Domestic Violence

Order for protection remedies

Many states have created order for protection remedies for complainant/survivors of domestic violence in their criminal and civil legislation. In the criminal system, orders for protection may be called domestic abuse or criminal no contact orders, and may be a part of the criminal process when a violent offender is accused of a crime. (For example, see: [Domestic Abuse Act of Minnesota, \(1979\)](#), [Minnesota, §518B.01 Subd.22.](#))

Civil orders for protection orders can take the form of emergency or ex parte orders (temporary orders issued without notice to the defendant), which last a short time, or complainant/survivors may seek longer-term orders for protection. These longer orders can require a full hearing before a judge with the respondent present. The [Domestic Abuse Act of Minnesota, USA \(1979\)](#), ([Minn. Stat. §518B.01 Subd.4](#)) was among the first laws on orders for protection in the world, enacted more than thirty years ago. The order for protection remedy has proven to be one of the most effective legal remedies in domestic violence cases. See: [Orders for Protection](#), StopVAW, The Advocates for Human Rights.

Promising practice: The [Protection against Violence Women Act \(1997\) of Austria](#) provides that the police may impose an expulsion or ban from the home immediately upon request of occupants of the residence. The police may also impose the orders when complainant/survivors turn to them after abuse or under threat of violence. This Act was evaluated in 2002 and is identified as a good practice and a promising example of legislation mandating protection orders by the [Secretary-General's in-depth study on violence against women](#) (2006). [The Secretary-General's database on violence against women](#) states: "The Protection against Violence Act was identified as a promising example of legislation mandating protection orders, also known as restraining or removal orders...Protection orders aim to protect women from the immediate threat of violence by restraining the perpetrator from contacting the victim/survivor during a specified period or removing the perpetrator from the home. The Austrian Protection against Violence Act has now been replicated in other European countries, including Germany."

CASE STUDY: Orders for Protection: Are They Effective and Cost-Effective?

Background:

In September 2009, a [U.S. Department of Justice](#) study entitled “The Kentucky Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs,” addressed whether a civil order for protection (OFP) was an effective remedy for victims of violence and whether the benefits of having an order for protection were worth the costs of obtaining and enforcing the orders. The study took place in Kentucky, USA, which allows OFPs to be filed against any family member, including spouses and former spouses, or, if the parties are unmarried, they may request an OFP if they are or have been living together or if they have a child in common. ([Kentucky Statutes 403.720](#))

Conclusions:

The study concluded that **orders for protection are effective in reducing violence. Even for those who experienced violations of the OFPs, both the severity of the violence which recurred and the fear of future harm were significantly reduced during the follow-up period.** The majority of the victims believed that the protective order was effective; only 4.3% of them dropped the order by the end of the follow-up period.

The study also concluded that the **cost to society of a protective order is very small** (about USD\$354) when compared to the many costs that a victim of domestic abuse incurs. (USD\$17,500 for the 6 months of violence before an OFP was issued; USD\$13,000 for the 6 month period after an OFP was issued.) The study reported that protective orders saved the state of Kentucky \$85 million in one year. **Thus, an OFP costs little but creates a large benefit for victims and society.**

Methodology:

The report, the most comprehensive in the US to date, surveyed over two hundred women in both rural and urban areas, and examined their responses at the time they sought an OFP, 3 months after it was issued, and 6 months after it was issued. The study also considered the opinions of “key informants,” such as criminal justice officials and victim service representatives, on issues relating to orders for protections. The study examined victim decisions on whether or not to report a violation, and determined the costs of protective orders for victims and the costs of domestic violence to society.

To determine if OFPs were a cost-effective method to combat domestic violence, the study established the costs of domestic violence both before and after an OFP was obtained. Victims were surveyed about services they received associated with the domestic abuse. Costs were measured, including the costs of emergency room visits, shelter stays, legal services and incarceration fees. The victims were asked about time lost from work and family responsibilities. The value of lost or damaged property was reported. Finally, victims were asked to recount their experiences with serious stress, anxiety or depression due to the abuse, both before and after the issuance of the OFP.

The study also addressed other issues, including the responses of the criminal justice system in rural and urban areas and how stalking cases escalate costs to victims and to society. For the complete report, click [here](#).

Other findings:

The report found that women face numerous obstacles to obtaining and enforcing OFPs, such as confusion about the process, court employees who were rude or discouraging, having to take off work and arrange for child care, and judges who seemed to rush them and not listen to them. The report found that "...obtaining a protective order and seeking enforcement of a protective order take courage and persistence..." (p. 6)

One-half of the women surveyed reported no protective order violations during the 6-month follow-up period. Protective order effectiveness was also measured by violence severity before and after the protective order, the number of victims who were afraid of future harm before and after the issuance of the OFP, and the victim's own perceived effectiveness of the order. Respondents were also asked why they chose to report a violation or why they did not.

The study found that victims reported 51% of the OFP violations. The main reason for not reporting violations was that the victims did not believe that the justice system would respond adequately, either because they hadn't received help previously, the violation was perceived to be not serious, they had no proof of a violation, or they believed that they would somehow be blamed for the violation. The study concluded that "...women appear to do a kind of cost-benefit analysis for whether or not to report the violation, trading off the seriousness of the violation with the probability that anything, or nothing, would come from reporting the violation to the justice system. Women also appear to consider whether reporting a violation might result in retaliation...Other reasons some women indicated they did not report violations included statements about not wanting to harm the perpetrator and not wanting the children to see their father in trouble."

When the victims were asked why they thought the abuser did not violate the OFP, the majority responded that it was because he was afraid of going to jail. (p. 116)

Recommendations:

The report issued a number of recommendations on: increasing access to OFPs; addressing gaps in victim safety and offender accountability; training law enforcement personnel; improving OFP enforcement; and responding more effectively to domestic violence cases which involve stalking.

Emergency or ex parte order for protection remedy

- Legislation should create an emergency or ex parte order for protection as a vital aspect of a domestic violence law. An ex parte order for protection is based upon the assumption that the complainant/survivor is in danger of immediate harm and must be protected by the state. The safety of a complainant/survivor and her children should be the most urgent priority of the legislation.

For example, the law of [Sierra Leone](#) states that:

“(1) Where an application is made ex parte to the court for a protection order, the court shall issue an interim protection order if it considers the order to be in the best interest of the applicant.

(2) In determining whether it is in the best interest of the applicant to issue an interim protection order, the court shall take into account-

(a) whether there is a risk of harm to the applicant or a relation or friend of the applicant if the order is not made immediately...” Part III 12

Promising practice: The law of [Namibia](#) requires a court to issue an ex parte order if the court finds that domestic violence has been committed. Section 7 (1)

- Legislation should authorize the issuance of an emergency or ex parte order for protection based upon a court or police order, but without the necessity for a court hearing. The complainant/survivor should be able to approach the court on her own to apply for an order for protection.
- Legislation should state that the statement of the complainant/survivor is sufficient for the court to grant the emergency order for protection. No other evidence should be necessary.
- The issuance of the emergency order for protection should occur very quickly to support the goal of victim safety.

For example, the law of [Bulgaria](#), Ch. 2, S.18, states that:

Where the application or request contains data concerning a direct and impending threat to life or health of the victim, the regional court, sitting ex parte and in camera, shall issue an emergency protection order within 24 hours as from receipt of the application or request. (Ch. 2, S.18(1))

- If the legislation allows other family members or relevant law enforcement officials or other professionals, such as social service professionals, to apply for emergency or ex parte orders for protection on behalf of a complainant/survivor who is competent, legislation should *require* that the complainant/survivor be consulted. (See: the [Addendum to Administrative Procedure Code](#) of Georgia, Article 21.12)

- The legislation should state that violation of the emergency or ex parte order for protection is a crime. See: the [Elimination of Domestic Violence, Protection of and Support to Its Victims \(2006\) of Georgia](#), (hereinafter law of Georgia) Article 10: *“Failure to comply with the conditions prescribed by protective and restrictive orders shall lead to criminal responsibility of the abuser.”*
- The legislation should state that it is the duty of the police and the prosecutor to enforce the emergency or ex parte order for protection. See: [UN Handbook](#), 3.10.4; law of [Philippines](#), Sec. 30; and [Family Violence: A Model State Code](#), 305, 306.
- Legislation should state that the authorities may not remove a survivor from the home against her will.
- The emergency or ex parte order should remain in effect until the longer-term protective order comes into effect after a full court hearing. Legislation should provide that upon the request of the respondent, a hearing may be promptly scheduled to review the application and to make a determination whether the order should remain in effect.

Contents of emergency or ex parte orders for protection

- The emergency or ex parte order should restrain the violent offender from causing further violence to the survivor, her relatives or other relevant persons.
- The emergency or ex parte order should provide that the police or courts may order the violent offender to stay away from the complainant/survivor and her children (and other people if appropriate) and the places that they frequent.
- The emergency or ex parte order should prohibit the violent offender from contacting the survivor or from arranging for a third party to do so.
- The emergency or ex parte order should require the violent offender to vacate the family home, without ruling on the ownership of property, and to provide the survivor with the use of a means of transportation, financial assistance, counseling, shelter fees, mortgage, rent, insurance, alimony and child support.
- The emergency or ex parte order should prohibit the violent offender from purchasing, using or possessing a firearm or any such weapon specified by the court.
- Legislation should provide that emergency or ex parte orders for protection may be issued in both criminal and civil proceedings.

The [UN Model Framework](#), IV, includes these specific provisions for emergency or ex parte orders for protection:

29. *The ex parte temporary restraining order may:*

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

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

Post-hearing order for protection remedy

Legislation should provide for an order for protection remedy that is independent of any other legal proceeding. The order for protection is much like the emergency or interim order for protection, but it should be issued after a full hearing and the order should provide protection and assistance remedies for a longer period of time. The goals of victim safety and offender accountability remain paramount in both types of protective orders. Legislation on orders for protection should provide that:

- The complainant/survivor or the guardian of a minor or legally incompetent complainant/survivor should have standing to apply for an order for protection. If the legislation allows other family members, relevant law enforcement officials, or other professionals, such as social service professionals, to apply for orders for protection on behalf of a complainant/survivor who is competent, legislation should require that the complainant/survivor be consulted. See: law of [South Africa](#), 4 (3); law of [Philippines](#), Section 11; and [UN Handbook](#) 3.10.6. Legislation should ensure that the complainant/survivor's wishes are the final factor in determining who may apply for an order for protection, because complainant/survivors are most often the best judge of the dangers presented to them by violent offenders. These dangers may increase when a complainant/survivor applies for an order for protection.

- The testimony of the complainant/survivor, in court or by sworn affidavit, should be sufficient evidence on its own for the issuance of an order for protection. No further evidence, police reports, medical reports or other reports should be necessary. (See: [UN Handbook](#) 3.10.7; and law of [Bulgaria](#), Ch. 1, S.13 (3))
- Legislation should provide for timely hearings on protection orders. For example, the law of [Philippines](#) allows for priority hearings for applications for protective orders. (Section 20)
- Legislation should specify that the violation of an order for protection, emergency or regular, is a crime. (See [UN Handbook](#) 3.10.9, and law of [Georgia](#), Article 10)

Promising practices:

Spain: The law of [Spain](#), where violation of order for protection triggers a full hearing on increasing aspects of protection for complainant/ survivor.

South Africa: The law of [South Africa](#), which provides that prosecutors may not refuse to institute a prosecution based on a violation of an order for protection, or withdraw a charge based on a violation of an order for protection, unless they have received authorization to do so from a Director of Public Prosecutions. Section 18 (1)

United Kingdom: The [United Kingdom Protection from Harassment Act \(1997\)](#), which allows a court to place a restraining order on the defendant even if he is acquitted of a criminal offense, in order to offer protection to the survivor. This allows the use of evidence in a criminal court which would normally be admissible only in a civil court under UK law, thereby extending further protection to complainant/survivors. Sec. 5 See: [Combating violence against women: Stocktaking study on the measures and actions taken in Council of Europe member states](#) (2006).

- Legislation should provide for increased penalties for repeat violations of orders for protection. (See: law of [Sierra Leone](#), Part III, 19)

Content of post-hearing orders for protection

- Legislation on the contents of orders for protection should describe a wide range of remedies to ensure safety and assistance to complainant/survivors. Legislation should ensure that orders for protection inform the complainant/survivor of criminal and civil remedies in addition to the order for protection. (See: The [UN Handbook](#), 3.10.2)
- Legislation on orders for protection should allow relief based on what the court deems necessary in order to protect the safety of the complainant/survivor or the family of the complainant/survivor. (See: the [Domestic Violence Act \(1998\) of Guyana](#), (hereinafter law of Guyana) Part II 7 (f); the [Domestic Violence Act \(2006\) of Zimbabwe](#), (hereinafter law of Zimbabwe) Section 11, (1) (i).

Promising practice: The law of [Namibia](#) states that, when determining the contents of a protection order, a court must consider, among other factors, the history of domestic violence by the respondent towards the complainant and the complainant's perception of the seriousness of the respondent's behavior. These factors may be important predictors of serious harm to complainant/survivors. Part II 7 (4) (a) and (d).

See: [Lethality or risk assessments](#).

- Legislation should contain provisions which prohibit the violent offender from further violence or from threatening to commit further violence, from contacting or going near the complainant/survivor and her dependents, from accessing the family home, and from possessing or purchasing a firearm.

Promising practice: [On Measures Against Violence in Family Relations \(2006\) of Albania](#) (hereinafter law of Albania), in which content of orders for protection includes the following provision on firearms:

g) ordering the law enforcement officers to seize any weapons belonging to the perpetrator, found during police checks, or ordering the perpetrator to surrender any weapons belonging to them; Ch III, Article 10, 1 (g)

The law of [Guyana](#) contains the following provision on the content of orders for protection:

6.(1) *Subject to this Act, a protection order may-*

- (a) *prohibit the respondent from being on premises in which a person named in the order resides or works;*
- (b) *prohibit the respondent from being on premises that are the place of education of a person named in the order;*
- (c) *prohibit the respondent from being on premises specified in the order, being premises frequented by a person named in the order;*
- (d) *prohibit the respondent from being in a locality specified in the order;*
- (e) *prohibit the respondent from engaging in harassment or psychological abuse of a person named in the order;*
- (f) *prohibit the respondent from speaking or sending unwelcome messages to a person named in the order;*
- (g) *direct the respondent to make such contribution to the welfare of a person named in the order as the court thinks fit;*
- (h) *provide for custody and maintenance of children;*
- (i) *prohibit the respondent from taking possession of specified personal property, being property that is reasonably used by a person named in the order;*
- (j) *direct the respondent to return specified personal property that is in his possession or under his control which belongs to a person named in the order;*
- (k) *prohibit the respondent from causing another person to engage in the conduct referred to in paragraph (e), (f) or (i);*
- (l) *specify conditions subject to which the respondent may be on premises or in a locality specified in the order;*
- (m) *direct the respondent to do or to refrain from doing any other act or act which the court in the circumstances of the case considers relevant;*
- (n) *provide that the respondent seek appropriate counseling or therapy from a person or agency approved by the Minister, by notice published in the Gazette.*

(2) *The court may make an order that includes a prohibition of the kind referred to in subsection (1)(a) or (i) notwithstanding any legal or equitable interests the respondent might have in the property comprising the premises or in the property to which the prohibition of the kind referred to in subsection (1)(i) relates.*

- Legislation should also include provisions which make it possible for a complainant/survivor to live independently from the abuser. Such provisions include granting the court or the police the authority to order the use of an automobile or other personal effects to the complainant/survivor. Legislation should allow courts to be able to order financial assistance in the form of mortgage, rent, insurance, alimony and child support.

For example, the law of [India](#) contains the following provision:

Monetary relief.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Ch. IV, 20

- Legislation should include provisions which consider medical bills, counseling or shelter fees.

Promising practice: [Spain's](#) law requires that judges who hear Orders for Protection must receive training on issues of child custody, security, and economic support for survivors and their dependants.

(See: [UN Model Framework](#), I 2 (k); and [Role of the Judiciary](#), StopVAW, The Advocates for Human Rights.)

The law of [Philippines](#) includes a provision that requires standardized forms for orders for protection.

- For a detailed list of legislative provisions of an order for protection, see *Family Violence: A Model State Code*, Sec. 204, Sec. 305, 306; available in [English](#); and [UN Model Framework](#), IV B.
- For an example of a form, see *Family Violence: A Model State Code*, Sec. 302; available in [English](#).

Warning provisions

Legislation should specifically preclude the use of warnings as a prerequisite for filing for a protection order, or be required as required evidence for obtaining a protection order.

Legislation should specifically preclude the use of warnings to violent offenders as a part of the police or judicial response to domestic violence. Warnings do not promote offender accountability or communicate a message of zero tolerance for violence. See: [Duties of police](#) and [Duties of judiciary](#).

Time limits on orders for protection

Legislation should provide that orders for protection may be left in place for a minimum of one year.

Ideally, a protection order should be left in place permanently, and only terminated by a finding by a court, based on clear evidence, that there is no longer any danger to the complainant/survivor. That way, a complainant/survivor does not have to appear in court and possibly confront her abuser on a regular basis. The law should state that the termination of an order for protection must be the responsibility of the court.

The law of [Minnesota](#), USA, allows orders for protection to be extended for up to 50 years under certain conditions:

Relief granted by the order for protection may be for a period of up to 50 years, if the court finds: (1) the respondent violated a prior or existing order for protection on two or more occasions; or (2) the petitioner has had two or more orders for protection in effect against the same respondent. Subd. 6a (b)

Promising practice: The [Protection of Women from Domestic Violence Act \(2005\) of India](#) states that a protection order shall be in force until the complainant/survivor applies for discharge, or until the Magistrate, upon receipt of an application from the complainant/survivor or the respondent, is satisfied that there is a change in the circumstances, requiring alteration, modification or revocation of the protection order. Ch. IV, 25.

Other key provisions in legislation on post-hearing orders for protection

Legislation on post-hearing orders for protection should:

- Not allow officials to remove complainant/survivor from her home against her will.
- Not allow for mutual orders for protection (OFP). A mutual OFP implies that both parties are responsible for the violence and it makes both parties liable for violations of the order. Advocates found that police faced with a mutual order often did not determine who was the primary aggressor and consequently either failed to enforce the order or arrested both parties. When a mutual OFP was enforced against a complainant/survivor, the consequences were dire: the complainant/survivor might lose child custody or her employment, or be evicted by a landlord.
- See: *The Toolkit to End Violence Against Women*, Ch. 3; available in [English](#); (StopVAW, The Advocates for Human Rights; [Determining the predominant aggressor](#); [UN Handbook](#) 3.10.8.1; and [Family Violence: A Model State Code](#), Sec 310)
- Not allow officials to cite complainant/survivors for “provocative behavior.” (See: [UN Handbook](#) 3.10.8.1.)
- Orders for protection should be effective and enforceable throughout a country.

Promising practice: The law of [Philippines](#) has a provision which mandates that orders for protection are enforceable throughout the nation.

- Orders for protection should be part of a national registration system so that police and law enforcement personnel can quickly and efficiently determine the existence of the order. (See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009. IV, 16 (h))
- Legislation should not contain any references to mandatory treatment for rehabilitation of complainant/survivors. Rather, legislation should provide for counseling services for a complainant/survivor if she determines she needs them. Many domestic violence complainant/survivors do not need psychiatric counseling or rehabilitative services, with the exception of employment services. Rehabilitation services which are offered to victims are provided only at the request of the victim. These services should never be compulsory or imposed on victims by government agencies or officials.
- Legislation should provide that a complainant/survivor may seek a protection order without the aid of an attorney.

Child custody provisions in orders for protection

- Legislation should include a provision that grants temporary custody of minor children to the non-violent parent.

For example, the law of [Bulgaria](#) allows the court to do the following:

temporarily relocating the residence of the child with the parent who is the victim or with the parent who has not carried out the violent act as stake, on such terms and conditions and for such a period as is specified by the court, provided that this is not inconsistent with the best interests of the child. S. 5 (1) 4.

- The legislation should contain a presumption that visitation by the violent parent should be supervised, and should not occur if it is against the will of the child. (See: law of [Spain](#); [UN Handbook](#) 3.10.8.2, and 3.13; and [OFPs and Family Law Issues](#), StopVAW, The Advocates for Human Rights.)

For example, the law of [Sierra Leone](#) states that a protection order may contain:

- (f) a provision temporarily-
 - (i) forbidding contact between the respondent and any child of the applicant;
 - (ii) specifying that contact between the respondent and a child of the applicant, must take place only in the presence and under the supervision of a social worker or a family member designated by the court for that purpose; or
 - (iii) allowing such contact only under specified conditions designed to ensure the safety of the applicant, any child who may be affected, and any other family members;
- if the court is satisfied that that is reasonably necessary for the safety of the child in question; Part III 15 (f)*

See also: Law of [Namibia](#).

India's approach is to allow the Magistrate to grant temporary custody to the non-violent parent, and states that if the Magistrate believes that any visit of the respondent may be harmful to the interests of the child, the Magistrate may refuse to allow the visit. (See: [law of India](#), sec.21.)

Drafters should enact separate laws on child abuse rather than attempt to address it within the domestic violence legislative framework. (See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009, II 14 (d).)

Family law and divorce

- Legislation should provide for divorce and for adequate alimony for spouses and children. (See: the [Maputo Protocol](#), Article 7)
- Legislation should provide for the complainant/survivor's right to stay in the home after the divorce.
- Legislation should provide for social insurance and pension rights for complainant/survivors.
- Legislation should provide for expedited distribution of property in divorce cases involving domestic violence.
- Legislation should mandate careful screening of all custody and visitation cases to determine if there is a history of domestic violence.
- Drafters must consider the dynamics of domestic violence when drafting laws and regulations on custody and visitation.
- Drafters must ensure that existing laws on child custody and other family law provisions focus on safety of the complainant/survivor and the best interests of the child in domestic violence cases. All provisions should be amended to reflect this focus.
- Child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers. See: [CASE STUDY: Guidelines for Domestic Violence Cases with Child Witnesses](#) below.

(See: [UN Handbook](#), 3.13.)

The [Children's Law Act \(1990\)](#) of Newfoundland, Canada states:

(3) In assessing a person's ability to act as a parent, the court shall consider whether the person has ever acted in a violent manner towards (a)his or her spouse or child; (b)his or her child's parent; or (c)another member of the household...Article 31

(See: [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005).)

Custody

Legislation should state that in every proceeding where domestic or family violence has occurred between the parents, there is a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of the violence. This presumption should extend to cases involving orders for protection, juvenile delinquency and child protection.

- Legislation should require the court to consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence.

- Legislation should require the court to consider the perpetrator's history of causing physical or psychological harm or causing the reasonable fear of physical or psychological harm to family members.
- Legislation should mandate that the absence of a parent from a court proceeding because of domestic violence, or the relocation of a parent due to domestic violence, are not factors which weigh against the absent parent in determining custody or visitation.

(See: [Family Violence: A Model State Code](#) (1994), USA, Sec. 401 and 402.)

For example, the Guardianship Amendment Act (1995) of New Zealand includes a presumption against giving custody or unsupervised access to a party who has used violence against a child or the other party to the proceedings unless the court was sure that the child would be safe from violence. A protective order under the [Domestic Violence Act \(1995\) of New Zealand](#) would trigger this presumption. (See: *Deserving of Further Attention: A Case Streaming Approach to Child Custody and Access in the Context of Spousal Violence* (2005))

Case Study: [Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence](#)

In a 2003 study, the [Arizona Coalition Against Domestic Violence](#) found that evidence of partner and/or child abuse did not prevent the abuser from winning sole or joint custody in most cases; income level—highly skewed in favor of fathers—apparently had the most impact on the custody order. Orders for protection had no impact on the final custody decision, with courts ignoring documented domestic violence evidence despite state law to the contrary. The study found that 100% of the victims were ordered to go to face-to-face mediation with the abuser. Researcher noted that a large number of judges thought that since the parties were separated, domestic violence was not a concern; and unsupervised visits were frequently awarded. A majority of the women also reported condescension from state actors, denial of adequate opportunity to present their cases, and the use of litigation abuse tactics by the batterers.

The study found widespread violations of state law, constitutional due process and equal protection guarantees, and international human rights law. The authors made a number of recommendations, including: ongoing training for judges and court personnel to educate them about the dynamics of domestic violence and child abuse, including post-separation violence; requiring judges to write detailed findings of fact and conclusions of law in their custody orders; no mandatory face-to-face meetings between victim and abuser; supervised visitation when there is violence; elimination of existing time limits for contested custody hearings; sanctions for litigants who abuse the legal process; and reform of the complaint process against judges and custody evaluators.

Residence of child

Legislation should state that in every proceeding where domestic or family violence has occurred between the parents there is a rebuttable presumption that it is in the best interest of the child to reside with the parent who did not perpetrate the violence in the location of that parent's choice. This presumption should extend to cases involving orders for protection, juvenile delinquency and child protection.

(See: [Family Violence: A Model State Code](#) (1994), Sec. 403.)

Competing statutory provisions

Legislation should provide that where there are statutory provisions which would compete with the rebuttable presumptions described above, for example a "friendly parent" provision, which favors a parent who will foster frequent contact with the other parent, or a provision that provides for the presumption of joint custody, these provisions shall not apply to cases involving domestic violence.

(See: [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005); [Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns \(Rev. 2007\)](#))

Inadmissibility of "parental alienation syndrome"

Legislation should state that "parental alienation syndrome" is not admissible as evidence in hearings on child custody or visitation. "Parental alienation syndrome" is a term for a situation in which one parent is accused of alienating a child from the other parent. In situations of domestic abuse, behavior that is reasonable to protect a child from abuse may be misinterpreted as a sign of instability. (See: [What is Parental Alienation Syndrome](#), The Leadership Council on Child Abuse and Interpersonal Violence last acc. 2/9/10.)

Visitation

Legislation should state that visitation may be awarded to a parent who committed domestic violence only if the court finds that adequate provision for the safety of both the child and the parent who is a victim of domestic violence can be made. Legislation should include the following options for providing safety to a child and victim parent where there has been domestic violence:

- The court may order the exchange of a child to occur in a protected setting.
- The court may order that the visitation be supervised by another person or an agency.
- The court may order the perpetrator to pay a fee to defray the costs of supervised visitation.

- The court may order the perpetrator to abstain from possession of alcohol or controlled substances both during the visitation and for 24 hours preceding the visitation.
- The court may prohibit overnight visitation.
- The court may require a bond from the perpetrator of domestic violence for the return and safety of the child.
- The court may impose any other condition that is deemed necessary for the safety of the child, the complainant/survivor, or other family members.

(See: [Family Violence: A Model State Code](#) (1994), Sec. 405.)

Confidentiality of address

Legislation should state that the court, whether or not visitation is allowed, may order the address of the child and the complainant/survivor to be kept confidential.

(See: [Family Violence: A Model State Code](#) (1994), Sec. 405.)

CASE STUDY: Guidelines for Domestic Violence Cases with Child Witnesses

Many incidents of domestic violence occur with children as witnesses. This exposure is a matter of continuing concern to child protection and child welfare professionals, as well as domestic violence service providers and domestic violence complainant/ survivors. While children exposed to domestic violence may be negatively impacted by such exposure, there are many steps that can be taken which can ameliorate these possible impacts.

Beginning in 2000, in the Canadian province of British Columbia, a collaborative inter-agency group developed and began to implement [Best Practice Approaches: Child Protection and Violence against Women](#) (2010) (hereinafter “Best Practices”). The group included practitioners and administrators from governmental agencies, medical centers, and non-governmental organizations. These guidelines draw upon research and expert documents developed in the Canada, the UK, and the US from 1995 to 2000, with the aim of helping those working in child protection and child welfare services to better understand the impact that exposure to domestic violence was having on children, and to train child protection service providers in the dynamics of intimate partner violence.

“Best Practices” is based upon the core assumption that, in situations of domestic violence, the child’s safety is interconnected with the safety of the complainant/ survivor, who is most often the child’s mother. To protect the child, steps must be taken to protect the mother, by providing safe and supportive services in a non-punitive, non-judgmental manner.

The report provides advocates with detailed practice options for different situations of domestic violence. For example, it prompts the advocate to ask about the level of danger in the home, if firearms are present, the nature of any threats, and if the mother is fearful for her own or her children’s safety.

The response of the child protection system must be based upon a well-trained child protection worker’s assessment of the circumstances of the totality of the case. If an investigation or intervention is required, the report offers practice tips for child protection service providers that support the safety of the mother, such as safe methods of contacting her, or the best way to arrange a meeting. (p. 13)

If there is an immediate concern for the safety of the children, “Best Practices” offers a series of steps for child protection service providers to take that reflect concern for the children, and at the same time, reflect respect for the person/caregiver who has been keeping the children safe to date. It suggests that caseworkers:

- Explain reasons for the concern to the woman in a direct, non-blaming manner.
- Elicit the woman’s and the service provider’s suggestions for a safety plan for the children.
- Develop a safety plan that tries to keep the child with the mother if possible by focusing on her safety, her strengths, and supportive resources.
- Explore how finances, threats and other issues might impact her options.(p. 14)

Effective intervention depends upon multi-agency, collaborative and integrated efforts that include battered women’s programs, child protection workers, law enforcement and the court system working together with the safety of the child and the mother at the forefront. “Best practices” concludes that the child and mother benefit the most when the violent offender is removed from the home and held accountable for the violence, not by separating the child from the mother.

- For assessment guidelines on evaluating the risks from batterers who profess to have changed, see [Assessing Risk to Children from Batterers](#) (2002).

See also:

- UK: [Tackling Domestic Violence: Providing Support for Children who have Witnessed Domestic Violence](#);
- USA: [Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice](#);
- [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005).

Civil lawsuits for damages

- Legislation should allow complainant/survivors to bring civil lawsuits against family member perpetrators irrespective of criminal charges. See: [UN Handbook](#) 3.12.1; [UN Model Framework](#), VI; and law of [Ghana](#).
- Legislation should allow complainant/survivors to bring civil lawsuits against individuals or state entities that have not prevented, investigated or punished acts of domestic violence. See [Gonzales v. US](#); and [UN Handbook](#) 3.12.2.

In [Gonzales v. US \(2007\)](#), the [Inter-American Commission on Human Rights](#) (IACHR) declared the case admissible for a merits hearing because the plaintiff had exhausted all of her legal remedies under United States law, and the [American Declaration on the Rights and Duties of Man](#) required the United States to protect domestic violence victims from private acts of violence. A merits hearing was held on 22 October 2008 in Washington, D.C., a year after the admissibility [decision](#). No decision has been issued to date on the merits.

Criminal Justice System Response to Domestic Violence

Duties of police officers

- Legislation should state that police and other law enforcement officials are obligated to pursue all cases of domestic violence, regardless of the level or form of violence. (See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009, III 15 (b).)
- Legislation should require the police to give domestic violence calls the same priority as other calls involving violence. (See: law of [Georgia](#)) For information on assigning priority levels to domestic violence calls, see: [The St. Paul Blueprint for Safety](#), p. 21.
- Legislation should require the police to perform certain duties as part of the investigative process in domestic violence calls, including interviewing parties separately, recording the complaint, filing a report, and advising the complainant/survivor of her rights.

For example, the law of [Brazil](#) mandates a police protocol which includes a provision requiring police to determine the existence of prior complaints of violence against the aggressor:

“... – command the identification of the aggressor and the addition of the aggressor’s criminal record to the judicial proceedings, indicating the existence of arrest warrant or record of other police occurrences against him...” Article 12, VI

- Legislation should specifically preclude the use of warnings to violent offenders as a part of the police or judicial response to domestic violence. Warnings do not promote offender accountability or communicate a message of zero tolerance for violence.
- Legislation should require that police officials develop policies for implementation of domestic violence laws that provide specific directives to front-line law enforcement. For example, the complete and accurate documentation of domestic violence incidents through police reports is an essential component for offender accountability. See: [The St. Paul Blueprint for Safety](#), p. 31.

Promising practice: The law of [Namibia](#), which requires the Inspector-General to issue specific directives on the duties of police officers, report to the responsible Minister on both the directives and the training provided to the police, and also to keep statistics from reports on domestic violence reports and to forward them to the relevant Minister. Part IV 26 and 27

- Legislators should ensure that specialized police units are created for the investigation and prosecution of domestic violence cases. These units should be women-only units so that complainant/survivors are more likely to seek assistance.

(See [Spain's](#) law; and the [Handbook on Effective police responses to violence against women](#) (2010) p. 39.)

Promising practice: The law of [Zimbabwe](#) provides that “where a complainant so desires, the statement of the nature of the domestic violence shall be taken by a police officer of the same sex as that of the complainant.” Section 5

- Legislation should require police to develop a safety plan for complainant/survivors. See: [Handbook on Effective police responses to violence against women](#) (2010), p. 74-75.
- Legislation should provide sanctions for police who fail to implement the provisions. See: law of [Albania](#), Article 8.

The [UN Model Framework](#) provides a detailed list of police duties within the context of complainant/survivor rights (III A) and a list of minimum requirements for a police report in paragraph 23.

The US Model Code recommends important provisions for the duties of a police officer, including confiscating any weapon involved, assisting the complainant in removing personal effects, and “taking the action necessary to provide for the safety of the victim and any family or household member.” See: [Family Violence: A Model State Code](#), Sec 204.

- See also: [Vision, Innovation and Professionalism in Policing Violence Against Women and Children](#) (2003), a Council of Europe training book for police.

Promising practice: The law of [Brazil](#) also requires the police to keep the complainant/survivor informed “of the procedural acts related to the aggressor, especially those related to entry and exit from prison...” Article 21

(See [UN Handbook](#), 3.8.1.)

CASE STUDY: The Duluth Pocket Card, a laminated pocket card which was developed by police in Duluth, Minnesota, with protocol to document domestic violence incidents:

Card 1

1. Duluth Police Department Report Writing Checklist

a) Domestic Assault Arrest/Incident

Document the following:

1. Time of arrival and incident
2. Relevant 911 information
3. Immediate statements of either party
4. Interview all parties and witnesses documenting:
 - (a) relationship of parties involved/witnesses
 - (b) name, address, phone - work/home, employer, etc
 - (c) individuals' accounts of events
 - (d) when and how did violence start
 - (e) officer observation related to account of events
 - (f) injuries, including those not visible (e.g. sexual assault, strangulation)
 - (g) emotional state/demeanor
 - (h) alcohol or drug impairment
5. Evidence collected (e.g., pictures, statements, weapons)
6. Children present, involvement in incident, general welfare. Children not present, but reside at the residence
7. Where suspect has lived during past 7 years
8. Medical help offered or used, facility, medical release obtained
9. Rationale for arrest or non-arrest decisions
10. Summarize actions (e.g., arrest, non-arrest, attempts to locate, transport, referrals, victim notification, seizing firearms)
11. Existence of OFP, probation, warrants, prior convictions
12. Victim's responses to risk questions including your observations of their responses
13. Names and phone numbers of 2 people who can always reach victim (**#s not to be included in report**)

(a) Reverse side of card

(2) Risk Questions

1. Do you think he/she will seriously injure or kill you or your children? What makes you think so? What makes you think not?
2. How frequently and seriously does he/she intimidate, threaten, or assault you?
3. Describe most frightening event/worst incidence of violence involving him/her.

(3) Victim Notification

- Provide victim with Crime Victim Information Card (including ICR number and officer's name)
- Advise of services of local domestic violence shelter
- Advise victim (if there was an arrest) that a volunteer advocate will be coming to her home soon to provide information and support
- If victim has a phone, inform her that the advocate will attempt to call her before coming.
- Contact the battered women's shelter as soon as possible and advise them of the arrest – 728-6481.

(4) Self-Defense Definition

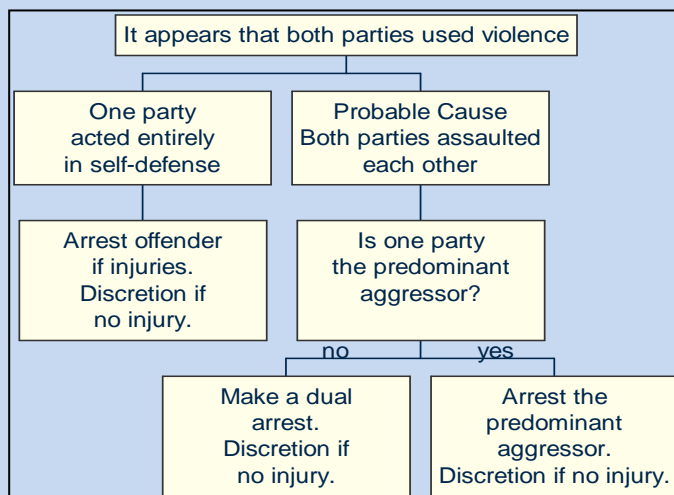
Reasonable force used by any person in resisting or aiding another to resist or prevent bodily injury that appears imminent. Reasonable force to defend oneself does not include seeking revenge or punishing the other party.

(5) Predominant Aggressor Consideration

Intent of policy – to protect victims from ongoing abuse

Compare the following:

- Severity of their injuries and their fear (incident)
- Use of force and intimidation
- Prior domestic abuse by either party
- Likelihood of either party to commit domestic abuse in the near future.



(See: [Duluth Police Pocket Card](#), StopVAW, The Advocates for Human Rights.)

- Legislation should require the police to inform the complainant/survivor of her rights and options under the law.

For example, the law of [India](#) requires a police officer to inform the victim of important rights:

5. Duties of police officers, service providers and Magistrate.-A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence. Ch. III, 5.

Promising practice: [Family Violence: A Model State Code](#), Section 204, describes a comprehensive written notice that police should be required to give to a complainant/survivor for later review. The Commentary to the Model State Code notes that “An officer may be the first to inform a victim that there are legal and community resources available to assist him or her. Written notice is required because a victim may not be able to recall the particulars of such detailed information given verbally, particularly because the information is transmitted at a time of crisis and turmoil. This written menu of options...permits a victim to study and consider these options after the crisis.”

The notice describes the options which a victim has: filing criminal charges, seeking an order for protection, being taken to safety, obtaining counseling, etc. The notice contains a detailed list of the optional contents for an order for protection. This would be of great assistance to a complainant/survivor who may not be familiar with the purpose of an order for protection. When a complainant/survivor is given a written notice and description of these options, it enables her to consider her options and to decide what is best for her safety and for the safety of her family.

(See: [Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices](#), UNIFEM, June 2009, which states that “Information on rights empowers complainants in negotiating settlements and also allows them to make informed decisions on the legal options that they may want to pursue.” page 22)

Promising practice: Ellen Pence, an expert on the Coordinated Community Response and many other aspects of domestic violence law and policy, recommends that police be trained to expect to see families in conflict numerous times, and to expect that a complainant/survivor may not accept their offer of help the first, second, or even third time. Police must be trained to respect the complainant/survivor’s wishes, and to assist her as she requests. (See: [The St. Paul Blueprint for Safety](#)).

(See: Council of Europe, [The Protection of Women against Violence Recommendation Rec\(2002\)5](#) #29.)

Lethality or risk assessments

Legislation should mandate that police investigate the level of risk to domestic violence victims in each case of domestic violence. (See: [Duluth Pocket Card Case Study](#)) For additional risk assessment factors, see: [Assessing Risk Factors for Intimate Partner Homicide](#) (2003). Other agencies of the criminal justice system, including prosecutors and judges, should also assess the level of risk to victims. (See section on [Lethality or risk assessments](#) below in Criminal Law Provisions and in the sections on [Duties of prosecutors](#) and [Duties of judiciary](#))

- See the resources on the National Judicial Institute on Domestic Violence [website](#).
- See the section on [Risk Assessment](#) in the Security Module.

Mediation or assisted alternative dispute resolution

Legislation should specifically preclude police from offering mediation or assisted alternative dispute resolution services to parties. Police should not attempt to improve relations in the family by offering these services or by mediating a dispute. (See: [UN Handbook](#) 3.9.1. See section under [Duties of judiciary](#) on [Mediation or assisted alternative dispute resolution](#).)

Determining the predominant aggressor

- Legislation should require the police to evaluate each claim of violence separately in situations where both parties claim violence. The police must look beyond the visual evidence and consider the context of the act of violence by identifying controlling behavior in the predominant aggressor and fear in the victim.

- Police must be able to recognize the [tactics of power and control](#). They must consider such issues as: the severity of injuries inflicted by both parties, the difference in size and weight of the parties, the demeanor of the parties, any prior complaints of violence, claims of self-defense and the likelihood of further injury to a party.
- The determination of the predominant aggressor, and the reasons for that determination, must be included in the police report. Otherwise, offenders will successfully manipulate the system and victims will not be protected. As a result, victims may not contact police the next time violence occurs. (See the [Duluth Pocket Card Case Study](#))
- If the predominant aggressor is misidentified, there could be important legal consequences for the victim, such as the denial of [custody of children](#), of [housing](#) rights and of [immigration](#) rights. Additionally, without being identified as a victim, a person would not be eligible for [shelter](#) or other forms of aid mandated by statute.

The [Criminal Domestic Violence law of South Carolina, USA](#), includes the following provisions on determining the primary aggressor:

(D) If a law enforcement officer receives conflicting complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer must not arrest the other person accused of having committed domestic or family violence. In determining whether a person is the primary aggressor, the officer must consider the following factors and any other factors he considers relevant:

- (1) prior complaints of domestic or family violence;*
- (2) the relative severity of the injuries inflicted on each person taking into account injuries alleged which may not be easily visible at the time of the investigation;*
- (3) the likelihood of future injury to each person;*
- (4) whether one of the persons acted in self-defense; and*
- (5) household member accounts regarding the history of domestic violence.*

(E) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage a party's requests for intervention by law enforcement.

(F) A law enforcement officer who arrests two or more persons for a crime involving domestic or family violence must include the grounds for arresting both parties in the written incident report, and must include a statement in the report that the officer attempted to determine which party was the primary aggressor pursuant to this section and was unable to make a determination based upon the evidence available at the time of the arrest.

(G) When two or more household members are charged with a crime involving domestic or family violence arising from the same incident and the court finds that one party was the primary aggressor pursuant to this section, the court, if appropriate, may dismiss charges against the other party or parties. Section 16-25-70

(See: [Family Violence: A Model State Code](#) Sec 205(B); and [Determining the Predominant Aggressor](#), StopVAW, The Advocates for Human Rights.)

Probable cause standard of arrest

Drafters should consider a probable cause standard of arrest, which allows police to arrest and detain an offender if they determine that there is probable cause that a crime has occurred even if they did not witness the offence. (See: [Minnesota 518B.01 subdv. 14\(d\)\(2\)\(e\)](#) and law of [South Carolina](#), Sec. 16-25-70 (A).)

(See also: [Law Enforcement Reform Efforts](#), StopVAW, The Advocates for Human Rights)

Duties of prosecutors

- Legislation should clearly state that it is the prosecutor's responsibility to pursue domestic violence cases regardless of the level of injury or evidence. See: [Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice](#) (1997) 7(b), which states that primary responsibility for initiating prosecution rests with prosecution authorities and not with complainant/survivors of domestic violence.

- Drafters must ensure that crimes involving domestic violence are not treated less seriously than other crimes. (See: law of [Georgia](#), Ch. V. Art. 6.)

For example, in the law of [Austria](#), *ex officio* prosecution is exercised at all levels of injury in cases of violence. (See: [UN Handbook](#), 3.8.2.)

By holding violent offenders accountable, prosecutors communicate to the community that domestic violence will not be tolerated.

- Legislation should require prosecutors to ensure that all available evidence has been collected by the police investigating body, including witness statements and photographs of injuries and the scene of the crime. By relying primarily on the evidence collected by the police rather than the victim's testimony, prosecutors may be able to reduce the risk of retaliation by an abuser and increase the likelihood of a successful prosecution.
- Legislation should mandate that prosecutors investigate the level of risk to domestic violence victims in each case of domestic violence. Other agencies of the criminal justice system, including police and judges, should also assess the level of risk to victims. See section on [Lethality or risk assessments](#) below in Criminal Law Provisions and in the sections on [Duties of police](#) and [Duties of judiciary](#)

(See: [Role of Prosecutors](#), StopVAW, The Advocates for Human Rights; [Prosecutorial Reform Efforts](#), StopVAW, The Advocates for Human Rights; and [CPS Policy for Prosecuting Cases of Domestic Violence](#), UK (March 2009).)

- Legislation should require that prosecutors keep the complainant/survivors informed of the upcoming legal proceedings and their rights therein, including all

Promising practice: the law of [Spain](#) creates the position of “Public Prosecutor for cases of Violence against Women,” who must supervise, coordinate, and report on matters and prosecutions in the Violence against Women Courts. (Article 70) The legislation also requires prosecutors to notify complainant/survivor of the release of a violent offender from jail and requires prosecutors who dismiss cases of violence against women to tell the complainant/survivor why the case was dismissed.

of the court support systems in place to protect them.

Pro-prosecution policy

Legislation should include a pro-prosecution policy in cases where there is probable cause that domestic violence occurred. This will ensure that the violence is treated seriously by prosecutors and allow complainant/survivors to retain some agency about the decision. (See: [UN Handbook](#), 3.8.3)

Absent victim prosecution

Legislation should provide for the possibility for prosecution of appropriate cases despite the inability or unwillingness of the complainant/survivor to testify. This approach ensures the safety of the complainant/survivor yet offers the support of the criminal justice system. (See: [UN Handbook](#), 3.9.5.) Legislation should require prosecutors to consider all evidence in a case that might support or corroborate the statement of the complainant/survivor, including evidence of a history of abuse.

Duties of judiciary

- Legislation should state that the judiciary must promote accountability for the perpetrator and safety for the complainant/survivor by instituting penalties for violations of orders for protection (see section on [Orders for Protection](#)) and by implementing safety procedures for complainant/survivors in the courtroom such as the presence of security guards, court escorts, and separate waiting rooms for complainant/survivors and violent offenders. For more information, see [Domestic Violence Safety Plan](#) (“Be Safe at the Courthouse” section).
- Legislation should specifically preclude the use of warnings to violent offenders as a part of the judicial response to domestic violence. Warnings do not promote offender accountability or communicate a message of zero tolerance for violence. See section on [Warning provisions](#), above.

- Legislation should provide that judges and court personnel should receive continuing education on: the causes, nature and extent of domestic violence; practices designed to promote the safety of victims and family members, such as [safety plans](#); the ramifications of domestic violence in custody and visitation decisions; resources available for victims and perpetrators; sensitivity to gender bias and cultural, racial, and sexual issues; and the lethality of domestic violence.

(See: [Family Violence: A Model State Code](#), Sec. 510; [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005).)

Lethality or risk assessments

Legislation should include a requirement for the judiciary to utilize a lethality or risk assessment guide. Other agencies of the criminal justice system, including police and prosecutors, should also assess the level of risk to victims. See section on [Lethality or risk assessments](#) below in Criminal Law Provisions and [Duties of police and Duties of prosecutors](#); See: [Assessing Risk Factors for Intimate Partner Homicide](#) (2003).

CASE STUDY: The Domestic Violence Risk Assessment Bench Guide:

The Domestic Violence Risk Assessment Bench Guide is a research-based guide in use by Minnesota, USA, judges at all stages of family, Order for Protection, civil or criminal cases which involve domestic violence. It includes an assessment and instructions for implementing the assessment. (The assessment can also be used by police, prosecutors, and domestic violence service providers.)

Note: The **presence** of these factors can indicate **elevated risk** of serious injury or lethality. The **absence** of these factors is not, however, evidence of the absence of risk of lethality.

1. Does alleged perpetrator have access to a **firearm**, or is there a firearm in the home?
2. Has the alleged perpetrator ever used or threatened to use a **weapon** against the victim?
3. Has alleged perpetrator ever attempted to **strangle** or choke the victim?
4. Has alleged perpetrator ever **threatened to or tried to kill** the victim?
5. Has the physical **violence increased in frequency or severity** over the past year?
6. Has alleged perpetrator **forced** the victim to have **sex**?
7. Does alleged perpetrator try to **control** most or all of victim's **daily activities**?
8. Is alleged perpetrator constantly or violently **jealous**?
9. Has alleged perpetrator ever threatened or tried to commit **suicide**?
10. Does the **victim believe** that the alleged perpetrator will re-assault or attempt to kill the victim? *A "no" answer does not indicate a low level of risk, but a "yes" answer is very significant.*
11. Are there any pending or prior Orders for Protection, criminal or civil cases involving this alleged perpetrator?

Note: These risk assessment factors are validated by a number of studies. See Campbell, Jacquelyn, et al, "Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners", National Institute of Justice (December, 2005); Heckert and Gondolf, "Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault". Journal of Interpersonal Violence Vol 19. No 7 (Julv 2004).

How To Use The Domestic Violence Risk Assessment Bench Guide

- **Obtain information regarding these factors through all appropriate and available sources.**
 - Potential sources include police, victim witness staff, prosecutors, defense attorneys, court administrators, bail evaluators, pre-sentence investigators, probation, custody evaluators and parties.
- **Communicate to practitioners that you expect that complete and timely information on these factors will be provided to the court.**
 - This ensures that risk information is both sought for and provided to the court at each stage of the process and that risk assessment processes are institutionalized.
 - Review report forms and practices of others in the legal system to ensure that the risk assessment is as comprehensive as possible.
- **Expect consistent and coordinated responses to domestic violence.**
 - Communities whose practitioners enforce court orders, work in concert to hold alleged perpetrators accountable and provide support to victims are the most successful in preventing serious injuries and domestic homicides.
- **Do not elicit safety or risk information from victims in open court.**
 - Safety concerns can affect the victim's ability to provide accurate information in open court.
 - Soliciting information from victims in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the victim.
- **Provide victims information on risk assessment factors and the option of consulting with confidential advocates.**
 - Information and access to advocates improves victim safety and the quality of victims' risk assessments and, as a result, the court's own risk assessments.
- **Note that this list of risk factors is not exclusive.**
 - The listed factors are the ones most commonly present when the risk of serious harm or death exists.
 - Additional factors exist which assist in prediction of re-assault.
 - Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports.
- **Remember that the level and type of risk can change over time.**
 - The most dangerous time period is the days to months after the alleged perpetrator discovers that the victim
 - might attempt to separate from the alleged perpetrator or to terminate the relationship
 - has disclosed or is attempting to disclose the abuse to others, especially in the legal system.

Legislation should specifically preclude police and legal system officials from offering mediation or assisted alternative dispute resolution services to parties, both before and during legal proceedings in domestic violence cases. Police and judges should not attempt to improve relations in the family by offering these services or by mediating a dispute. (See: [UN Handbook](#) 3.9.1 and section on [Duties of police](#))

Mediation reflects an assumption that both parties are equally at fault for the violence. It assumes that both parties have equal bargaining power, yet in reality an abuser may hold tremendous power over a victim. Mediation also removes a domestic violence case from public view and objective judicial scrutiny.

(See: [Mediation](#), StopVAW, The Advocates for Human Rights; and [Family Violence: A Model State Code](#), Sec. 311)

Promising practice: [Spain's](#) law prohibits the use of mediation in domestic violence cases. (Art. 44)

Timely and expedited proceedings

Legislation should require that legal proceedings occur on a timely basis. Experience has shown, however, that if proceedings are expedited too quickly, a complainant/survivor may withdraw if she feels that it is out of her control.

For example, in Spain, the Organic Act on Important Reviews of the Code of Criminal Procedure (2002) provided that court hearings in domestic violence cases should come before a judge within 15 days. Some complainant/survivors withdrew from the process, suggesting that the speed of the court hearing might make the complainant/survivor feel they aren't able to make decisions about their relationship at their own pace. (See [UN Handbook](#), 3.9.2.)

Criminal Law Provisions

Criminal penalties and procedures

Legislation should state the penalties for all acts of domestic violence, including those involving low-level injuries. Legislation should not allow for payment of bride price or dowry as defenses to charges of domestic violence.

Evidence

- Legislation should provide that medical or forensic evidence is not required for domestic violence convictions.
- Legislation should prevent the introduction of the survivor's sexual history in both civil and criminal proceedings either during the trial or during the sentencing phase.
- Legislation should state that a survivor, including a minor survivor, may receive a medical and forensic examination regardless of whether or not the survivor reports to law enforcement. In countries with mandatory reporting laws, legislation should require mandatory reporters to provide a full explanation of laws and policies to the survivor when a report is required.
- Legislation should state that the survivor, including a minor survivor, may be examined and treated by a forensic doctor or other medical practitioner without the consent of any other person.
- Legislation should state when the survivor is referred for medical examination, the examination should be done at the expense of the state.
- Legislation should allow the presentation of expert testimony on domestic violence. Jurors who are exposed to relevant social and psychological research on domestic violence are more likely to understand the dynamics of domestic violence, power and control tactics, and the dynamics of victimization. Experts could assist the court in explaining such victim actions as recantation, returning to an abuser, or demonstrating ambivalence about prosecution of an abuser
- Legislation should provide that a court may not distinguish between the weight given to the testimony of a complainant in a domestic violence case and the weight given to the testimony of any other witnesses.

Prompt complaint

Legislation should state that no adverse inference shall be drawn from a delay between the act of violence and the reporting of the act of violence. The judicial officer should be required by the legislation to so inform the jury.

Treatment or diversion programs for perpetrators

Legislation should provide that if intervention, treatment or diversion programs (pretrial diversion programs are alternatives to prosecution which seek to divert offenders with no prior offences from traditional criminal justice processing into a program of supervision and services) are prescribed for perpetrators, the operators of such programs must work in close cooperation with survivor service providers to enable constant feedback from the complainant/survivor about the recurrence of violence. Legislation should provide that all sentences to alternative, treatment, or diversion programs are to be handed down only in cases where there will be continuous monitoring of the case by justice officials and survivor organizations to ensure the survivor's safety and the effectiveness of the sentence. Legislation should require that such alternative sentences be monitored and reviewed on a regular basis. Legislation should require immediate reports to probation officers and police about recurring violence. (See: [UN Handbook](#) 3.11.6; [The Toolkit to End Violence Against Women](#), p. 14)

For example, the [Criminalization of Violence against Women Law \(2007\) of Costa Rica](#) (Spanish only) includes detailed conditions on when alternative sentences may be imposed, and on the alternatives which are available. Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) (2004) provides for suspension of certain penalties (under two years in jail) if the perpetrator participates in an intervention programme. (Article 35)

Criminal sanctions and sentencing provisions

- Criminal penalties should be increased for repeated domestic violence offenses, even if they involve low-level injury. (See: [Family Violence: A Model State Code](#), Sec. 203.) A 2009 study entitled [Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges](#) reported that enhanced penalties significantly reduced rearrest rates for domestic violence offenses. p. 52

For example, the law of [Malaysia](#) provides increased penalties for violations of protection orders and for violations that involved violence, and also allows the court to make a new order for protection:

8. (1) *Any person who willfully contravenes a protection order or any provision thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.*

(2) *Any person who willfully contravenes a protection order by using violence on a protected person shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or to both.*

(3) *Any person who is convicted for a second or subsequent violation of a protection order under subsection (2) shall be punished with imprisonment for a period of not less than seventy-two hours and not more than two years, and shall also be liable to a fine not exceeding five thousand ringgit.*

(4) *For the purposes of this section a "protection order" includes an interim protection order.*

9. *Where a person against whom a protection order has been made contravenes the protection order, the court may, in addition to any penalty provided for under section 8, make or make anew, as the case may be, any one or more of the orders under subsection 6(1), to commence from such date as is specified in such new order. Part II, 8 and 9.*

- Legislation should specify that penalties for crimes involving domestic violence should be more severe than similar non-domestic violence-related crimes. This sends the important message that the state will treat a domestic violence crime as seriously, if not more seriously, than a crime against a stranger. For example, the [Criminal Code \(2007\) of Hungary](#) requires higher penalties for a person who harasses their ex-spouse or their child than if they harass someone else. Section 176/A. [Amendments to the Criminal Code \(1994\) of France](#) provide higher penalties for certain acts of torture or violence when committed by a spouse or co-habitee of the victim. Articles 222-3, 222-8, 222-10 and 222-11. See: the [Criminal Code \(2002\) of Moldova](#), which provides higher penalties for murder and severe and deliberate acts of violence against a spouse or close relative. Articles 145, 150, 151, 152 and 154. It also provides a higher penalty for inducing a spouse or close relative to commit suicide. Article 150. The [Criminal Code](#)

[\(2004\) of Romania](#) provides for a higher penalty for the murder of a spouse or close relative (Article 179) or the rape of a family member. Article 217.

In Minnesota, USA, as well, these crimes include higher penalties than the same crime committed outside a domestic relationship: domestic assault which includes strangulation; murder while committing domestic violence or if the perpetrator has engaged in a past pattern of domestic violence; and unintentional murder when the perpetrator is restrained under an OFP and the victim was designated to receive protection under that order. (See: [Minn.Stat.§609.185\(a\)\(6\)](#); and [Minn.Stat.§609.19 Subd.2\(2\)](#).)

- Legislation should include guidelines for appropriate sentences for domestic violence-related offenses. For a list of goals in sentencing, see: [Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), March 2009, 17(a).
- Legislation should provide that sentencing guidelines reflect the gravity of the offense. The [Criminal Code of Serbia](#) increases the term of imprisonment if domestic violence is committed with a weapon or if death results. Article 194.
- Legislation should provide that sentencing be enhanced for repeat offenses, including repeated violations of orders for protection. Andorra's approach is to states that domestic violence repeat offenders shall receive a term of imprisonment irrespective of any other penalty that may be imposed on account of the injuries caused in each instance. [The Criminal Code \(2005\) of Andorra](#), Article 114.

For example, [South Carolina](#), USA, has more severe penalties for “criminal domestic violence of a high and aggravated nature” when one of the following occurs:

The person commits: (1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or (2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death. Section 16-25-65 (A)

- Legislation should allow an option for a judge to eliminate a fine if it would create a financial burden for the complainant/survivor. Although fines are commonly issued as a part of sentencing perpetrators, fines can present a significant problem for a complainant/survivor who must make use of the assets of the perpetrator to feed and house a family.
- Legislation should require judges to consider victim impact statements in all cases of domestic violence.

Lethality or risk assessments

- Legislation should mandate that the police, prosecutors, and the judiciary investigate the level of risk to domestic violence victims. Such assessments are vital to determining the risk of further injury to the victim, or homicide, and should

play an important role in police and judicial response to each case. (See: [Duties of police](#) and [Duties of prosecutors](#), and [Duties of judiciary](#) sections.)

- Such an assessment should include such questions, such as “Have you been choked?” or “Does he possess a firearm or other weapon and has he threatened to use it?” The assessment can give the legal system and the complainant/survivor important information to prepare for her safety. (See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009, Section IV, 16 (f).)

Promising practice: The [Alberta Relationship Threat Assessment and Management Initiative](#) of Alberta, Canada is a domestic violence threat assessment unit that involves academic specialists, family law experts, child intervention case workers, police, and prosecutors. It coordinates the efforts of justice officials and community organizations to more effectively address threats posed in violent, high-risk relationships and stalking situations. It also serves as a resource for police, domestic violence shelters, corrections officials, mental health workers, and communities.

Felony strangulation provisions

Legislation should provide serious penalties for strangulation. Many domestic violence victims have experienced some form of attempted strangulation, which has often been discounted as “choking.” This form of abuse can have serious physical and psychological consequences, and is often a precursor to deadly violence.

Promising Practice: A provision of Minnesota, USA, law ([Minn. Stat §609.2247](#)) which makes strangulation of a family or household member a specific and serious crime.

See: [The Impact of the Minnesota Felony Strangulation Law](#). This report examines the impact the law has had on victim safety, defendant accountability, and public awareness.

(See also: Minnesota Coalition for Battered Women, “[Facts About Intimate Partner Strangulation](#)” (2009); and Minnesota Coalition for Battered Women, “[Information about Murder-Suicide](#)” (2009).)

Fatality reviews

Legislation should require domestic violence fatality reviews. These are reviews, conducted by police, advocates and other community responders, which examine community systems to assess whether domestic violence homicides could have been prevented had various institutions responded differently. (See: Chapter 4 of [The Toolkit to end Violence against Women](#), p. 15.)

Promising practices: the [Domestic Violence, Crime and Victims Act \(2004\) of United Kingdom](#) (hereinafter law of United Kingdom) provides for “domestic homicide reviews” which review the death of persons age 16 or over when the death appears to have resulted from violence, abuse, or neglect by a family member, intimate partner, or member of the same household. The review is to be “held with a view to identifying the lessons to be learnt from the death.” 9

In [Ireland](#), the Office of Director of Public Prosecutions (ODPP) is conducting a review of the female domestic violence homicides from the past 10 years, “with a view to determining the nature and quality of interventions with the victim and or perpetrator, and whether opportunities for effective intervention were maximised. The research will also examine the requisite steps for the introduction of a domestic violence homicide review mechanism in Ireland.” See: [Researching the Antecedents to Female Domestic Homicides](#).

Conditions of release

- In determining bail in cases of violations of orders for protection, police and judicial officials must make determinations about victim safety, including the threat that the violent offender presents to the complainant/survivor, her family, and her associates, and must place conditions upon the release of the offender that reflect these concerns. See the section on [Lethality and risk assessments](#).

(See: [Family Violence: A Model State Code](#), Sec 208.)

For example, Guyana’s [Domestic Violence Act](#) (1998) contains the following provisions:

Where the court is required to determine whether to grant bail in respect of an offense under section 32 [violating a protection order or an interim protection order] the court shall take into account, inter alia-

- (a) the need to secure the health, safety and well-being of the person named in the protection order;*
- (b) the need to secure the health, safety and well-being of any relevant child;*
- (c) any hardship that may be caused to the defendant or to members of the family if bail is not granted;*
- (d) the defendant’s record with regard to the commission of violent acts and whether there is evidence in the record of physical or psychological abuse to children; and*
- (e) any other matters which may be relevant to the case in question. Sec. 35(1).*

- Legislation should provide specific direction to law enforcement officials about the conditions of release for violent offenders who have been arrested for violating an order for protection or for an act of domestic violence. See: the [Code of Criminal Process \(2007\) of Portugal](#), which reinforces the prohibition on the offender to contact certain offenders in any way.

Promising practice: Some US states require that certain violent offenders who may be likely to re-offend wear a satellite tracking device so that if they enter certain prohibited zones, such as the areas surrounding the survivor's home, workplace, or daycare, an alarm is triggered to warn police and the survivor. Advocates report that when an offender knows that they are being monitored and the consequences are swift, homicides related to domestic abuse drop. GPS devices cost about \$25 USD per day per offender, compared to \$75 USD to keep an offender in jail.

- For example, the [Act Further Protecting Victims of Domestic Violence \(2006\) of Massachusetts, USA](#) (hereinafter the law of Massachusetts) states:

“Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant’s residence, place of employment, and the complainant’s child’s school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant’s location data. If the defendant enters a court defined exclusion zone, the defendant’s location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant’s ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system.” Ch. 418, Sect. 7

- See also: [Illinois, USA, Code of Criminal Procedure, Sec. 110-5](#).
- The [Criminal Code of Portugal \(2007\)](#) also provides for technical monitoring of offenders.

Other Provisions Related to Domestic Violence Laws

International law issues

CASE STUDY: Obtaining redress for domestic violence through human rights bodies

Plaintiffs in domestic violence cases have been successful in obtaining redress against states through various international bodies:

A.T v. Hungary: In 2005, the Committee on the Elimination of Discrimination Against Women, the independent experts who monitor the implementation of the Convention on the Elimination of Discrimination Against Women (CEDAW), found that the complainant, although she sought help from Hungarian civil and criminal courts and child protection authorities, did not receive any assistance or protection from the Hungarian government. The case involved allegations of severe domestic violence. The Committee found that Hungary had violated the rights of A.T. under the Convention, and made recommendations to Hungary that it act to protect the safety of the author and act more generally to effect the rights granted under the Convention.

Bevacqua and S. v. Bulgaria: This decision, issued by the European Court of Human Rights in 2008, found that, in the specific circumstances of this case, Bulgaria had violated its obligations under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms by requiring the domestic violence victim to prosecute the case. The Court awarded costs and damages to the applicants. The case is significant as the first domestic violence case to be decided in the European Court of Human Rights.

Opuz v. Turkey: In 2009, the European Court of Human Rights found that Turkey had failed to use due diligence to protect the plaintiff from domestic violence, as it was required to do under the European Convention on Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, and awarded the plaintiff damages.

Survivors and asylum law

- Legislation should provide that complainant/survivors who do not have legal status are not subjected to immigration sanctions, including deportation, when they report violence to authorities.
- Legislation should allow complainant/survivors who do not have legal status to apply for legal status in confidence and independently from the perpetrator.

(See: UN Handbook 3.7.1; VAWA, USA; and the Immigration and Refugee Protection Act (2002) of Canada.)

Resources for Developing Legislation on Domestic Violence

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Sexual Assault

Overview

Criminal law on sexual assault

Rights of survivors

Survivor services

Other legal issues in sexual assault cases

Resources

Overview

Core elements of legislation on sexual assault

The following elements should be established as the core elements of any sexual assault law. Each element is discussed in detail starting with [Definition of sexual assault](#), below:

- A definition of sexual assault which is not framed as a crime of honor or morality;
- A definition of sexual assault that does not require penetration or force;
- Prohibition of mitigating factors such as intoxication of perpetrator;
- Provision for enhanced penalties for aggravating circumstances such as the threat or use of force, or the age or disability of survivor;
- Criminalization of sexual assault within an intimate relationship;
- Burden on accused to prove consent;
- Provision for a broad range of circumstances in which consent is immaterial, such as sexual assault by an individual in a position of authority such as in a correctional facility or by individuals in certain professional relationships to the survivor such as an ongoing psychotherapist-patient relationship;
- Provision for a broad range of coercive circumstances around consent such as intimidation or fraud;
- Prohibition of requirement of corroboration of survivor's evidence;
- Prohibition of introduction of survivor's sexual history as evidence at all phases of civil or criminal trial where it is unrelated to the case;
- Prohibition on use of mediation at all stage of the process;
- Prohibition of perpetrators from possessing firearms;
- Fully developed emergency and long-term order for protection remedies and no contact order remedies;
- Criminalization of violation of orders for protection and no contact orders;
- Provision for support services such as counseling and medical treatment to survivors at all stages of process; and
- Mandated training for law enforcement, judicial, medical, and social service professionals.

Sources of international law

These international statements of law and principle provide a foundation for the right to be free from sexual assault.

- The [Universal Declaration of Human Rights](#), 1948, states that “Everyone has the right to life, liberty and security of person” in Article 3. In Article 7, it states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” In Article 8, it declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
- The [International Covenant on Civil and Political Rights](#) (1966) prohibits discrimination on the basis of sex, and mandates states parties to “...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Article 2 It states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 7. In Article 9, it states that that “[e]veryone has the right to liberty and security of person.”
- The [International Covenant on Economic, Social and Cultural Rights](#) (1976) declares that states parties must “...ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth [therein].” Article 3
- The [Convention of the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979, defines discrimination against women as:
“...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (Article 1)
State parties to CEDAW must eliminate this discrimination by adopting “...appropriate legislative and other measures, including sanctions where appropriate...” and must agree “To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination...” (Article 2)
- The [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(1984\)](#) includes in its broad definition of torture “...when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” (Article 1) In Article 2, the Convention states that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” In Article 4, crimes of torture are linked to the criminal law of a state:

1. *Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.*

2. *Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.*

- In [General Recommendation 19](#) (1992), the Committee on the Elimination of Discrimination Against Women interpreted the term “discrimination” used in CEDAW to include gender-based violence by stating that it is

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

Paragraph 7 states: “Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Paragraph 1 of the Convention,” and goes on to enumerate these rights and freedoms, including:

b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;... and

(d) The right to liberty and security of person;

In Paragraph 9 the Committee declared that “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

It also rejects customary or religious justifications for gender-based violence:

“Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” Paragraph 11

The Committee recognized the dangers presented to women where there is war or conflict in Paragraph 16: “Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.”

Finally, the Committee recommended that “States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity...” 24(b)

- The United Nations [Declaration on the Elimination of Violence against Women](#), (DEVAW) 1993, acknowledged that the root cause of violence against women is the subordinate status of women in society by stating that:

“...violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men...” Preamble

DEVAW also links violence to especially vulnerable women:

“...some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence...”, Preamble

It exhorts states to action in Article 4: *“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women...”* including, *inter alia*:

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;...

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;...

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women...

The United Nations Security Council has addressed sexual violence against women in conflict situations by enacting specific resolutions:

- [Security Council Resolution 1325](#) (2000) called on member states to incorporate a “gender perspective” and increase the equal participation of women in the “prevention and resolution of conflicts” and in the “maintenance and promotion of peace and security.” It calls upon parties involved in armed conflict to abide by international laws that protect the rights of civilian women and girls and to incorporate policies and procedures that protect women from gender-based crimes such as rape and sexual assault.
- [Security Council Resolution 1820](#) (2008) called for an end to the use of brutal acts of sexual violence against women and girls as a tactic of war and an end to impunity of the perpetrators. It requested the Secretary-General and the United Nations to provide protection to women and girls in UN-led security endeavors, including refugee camps, and to invite the participation of women in all aspects of the peace process.
- [Security Council Resolution 1888](#) (2009) detailed measures to further protect women and children from sexual violence in conflict situations, such as asking the Secretary-General to appoint a special representative to coordinate the mission, to send a team of experts to situations of particular concern, and to mandate peacekeepers to protect women and children.
- [Security Council Resolution 1889](#) (2009) reaffirmed Resolution 1325, condemned continuing sexual violence against women in conflict situations, and urged UN member states and civil society to consider the need for protection and empowerment of women and girls, including those associated with armed groups, in post-conflict programming.

The UN Secretary-General appointed a [Special Representative on Sexual Violence in Conflict](#) in 2010.

International Statutes and Jurisprudence on Sexual Violence

- The [Rome Statute of the International Criminal Court](#) (2002) established the International Criminal Court to deal with the most serious crimes of concern to the international community. Its preamble declares that is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes. In Article 7(1)(g), the Rome Statute identifies rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as crimes against humanity when committed as

part of a widespread or systematic attack directed against any civilian population. The acts are classified as war crimes under Article 8.

- The United Nations Security Council created the International Criminal Tribunal for Rwanda to adjudicate cases of sexual violence during the Rwandan genocide. One case in particular created important jurisprudence on sexual violence in situations of conflict. In [Prosecutor v. Akayesu](#) (1998), the International Criminal Tribunal for Rwanda (ICTR) convicted a Rwandan official of mass rape and sexual mutilation on the basis of his actions in his official capacity, not as an individual perpetrator. The Tribunal also broadened the definition of rape beyond that found in the national laws:

The Tribunal considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts...Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Para 687

The case also included a comprehensive definition of sexual violence. See: [Case Study on Prosecutor v. Akayesu](#), below.

(See: [Gender-Based Violence Laws in Sub-Saharan Africa](#) (2007).)

Regional Treaties (selected examples)

- The [American Declaration of the Rights and Duties of Man](#) (1948) declares that “Every human being has the right to life, liberty and the security of his person.” Article I. In Article V, it states that “Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.” The Declaration also states that “Every person may resort to the courts to ensure respect for his legal rights.” Article XVIII.
- The [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#) (1994) (Convention of Belém do Pará) states that women have “the right to be free from violence in both public and private spheres.” Article 3 It declares that a woman has “The right to simple and prompt recourse to a competent court for protection against acts that violate her rights...” Article 4 (g) States parties must exercise due diligence to prosecute, punish and prevent such violence, and “...include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary...” Article 7

- The [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (2003) (The Maputo Protocol) states that:

“States Parties shall adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.” (Article 3)

The Maputo Protocol also mandates states parties to “enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public...” Article 4(a) It offers special recognition of the vulnerability of women in situations of armed conflict in Article 11, including the following:

“States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.”

- In the [Declaration on the Elimination of Violence Against Women in the ASEAN Region](#), (2004) states parties agree:

“To enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimisation of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody...” Section 4

Contents of legislative preamble

The legislative preamble sets the stage for the entire piece of legislation. The following elements are important to a strong and inclusive legislative preamble:

- State that the root cause of violence is the subordinate status of women and girls in society. See: [General Recommendation 19](#), Paragraph 11. The [UN Secretary-General’s study on violence against women](#) (2006) states: “The pervasiveness of violence against women across the boundaries of nation, culture, race, class and religion points to its roots in patriarchy- the systemic domination of women by men.” Part III, B 1 para.69.
- See: [Council of Europe Recommendation Rec\(2002\)5: Handbook for legislation on violence against women](#), (hereinafter UN Handbook) 3.1.1; [Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice: Resource Manual](#), p. 9 (hereinafter Model Strategies); and [Annex to General Assembly resolution 52/86](#).

- Define discrimination against women and girls as a restriction based upon sex which impairs the rights of women and girls. (See: [UN Handbook](#) 3.1.1)
- State that the purpose of the legislation is to criminalize violence against all women and girls. (See: [UN Handbook](#) 3.1.2 and 3.1.3.) [General Recommendation 19](#) 24 (b) states:
(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity...

CASE STUDY: “[Maze of Injustice](#),” a report on the inadequate state response to sexual violence against indigenous women in the United States, and a Promising Response.

In 2007, Amnesty International published a report on the state response to sexual violence against indigenous women in the United States. The report found that legislation in the US does not protect indigenous women from domestic violence and sexual assault. The marginalization of indigenous women has resulted in a system that ignores their human rights.

Indigenous women in the United States experience sexual violence at a much higher rate than other US women: more than one in three indigenous women will be raped during their lifetime, compared to one in five women in the US. The report found that this sexual violence is under-reported and when reported, is often not prosecuted. There is evidence that the majority of perpetrators are non-indigenous and that the assaults are committed with a high degree of violence. Victims do not receive adequate assistance, redress and reparations. The report noted that indigenous women experience this violence as a direct result of the discrimination and violence at the root of the indigenous experience in USA history.

Indian tribal law is a separate system that interacts with US federal and state laws in a complex manner. These jurisdictional issues have been a substantial barrier to perpetrator prosecution and to an adequate response to victims of sexual assault. And, the US government has limited the effectiveness of the tribal government system by underfunding its operation, by not allowing non-Indian suspects to be prosecuted in the tribal system, and by limiting any sentence a perpetrator receives under the tribal system to one year. Thus indigenous victims of sexual assault do not achieve adequate redress in the US federal or state justice systems or the tribal law system. The report stated:

“Impunity for perpetrators and indifference toward survivors contribute to a climate where sexual violence is seen as normal and inescapable rather than criminal, and where women do not seek justice because they know they will be met with inaction.” p. 9

Key recommendations for the US government include: instituting plans of action to stop sexual violence against indigenous women; recognizing the jurisdiction of tribal courts on tribal land; supporting the development of the tribal courts; and improving the response of law enforcement to reports of sexual violence against indigenous women. (p.12-13)

Responding to the report and continued advocacy by tribal leaders and organizations, Native American and Alaska Native women, the [Tribal Law and Order Act of 2010](#) was passed by Congress in July 2010. The Act includes measures aimed to improve division of responsibility, coordination and communication among Federal, State, tribal, and local law enforcement agencies; reduce the prevalence of domestic and sexual violence against Native American and Alaska Native women; prevent substance abuse (drug and alcohol) on Native American territory; and expand and strengthen crime-related data collection and information sharing on among Federal, State, and tribal officials.

- Exclude customary or religious justifications for sexual violence. (See: UN Handbook 3.1.5; and [Declaration on the Elimination of Violence against Women](#), 1993, A/RES/48/, Article 4.)
- State that existing laws that are in conflict with new laws on violence against women and girls, including those in multiple legal systems, should be modified. (See: [Good practices in legislation on “harmful practices” against women](#), (2009), 3.1.1.)
- Ensure that a case which has been processed under a religious or customary judicial system may still be brought under the state’s formal justice system. (See: [UN Handbook](#) 3.1.5.)
- Affirm the duty of the state to prevent, investigate and punish sexual assault. See: [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#), (“Convention of Belém do Para”) Article 7; [Declaration on the Elimination of Violence against Women](#), 1993, A/RES/48/, Article 4.

Many states reflect these principles in their preamble or introductory language in criminal codes.

- For example, the [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No. 32\) \(2007\) of South Africa](#) includes the following in the preamble to its legislation:

“WHEREAS several international legal instruments, including the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, 1979, and the United Nations Convention on the Rights of the Child, 1989, place obligations on the Republic towards the combating and, ultimately, eradicating of abuse and violence against women and children; AND WHEREAS the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic of South Africa, including the right to equality, the right to privacy, the right to dignity, the right to freedom and security of the person, which incorporates the right to be free from all forms of violence from either public or private sources, and the rights of children and other vulnerable persons to have their best interests considered to be of paramount importance, BE IT THEREFORE ENACTED...”

- And, the [Criminal Code \(2004\) of Turkey](#), in Article 3, “The Principle of Equal Treatment before the Law” states that:

In the implementation of the Penal Code no one shall receive any privilege and there shall be no discrimination against any individual on the basis of their race, language, religion, sect, nationality, colour, gender, political (or other) ideas and thought, philosophical beliefs, ethnic and social background, birth, economic and other social positions. Article 3

- The Crimes Act (1958) of Victoria, Australia, has incorporated the following guiding principles into its Crimes Act:

37B. Guiding principles

It is the intention of Parliament that in interpreting and applying Subdivisions (8A) to (8G), courts are to have regard to the fact that-

- (a) there is a high incidence of sexual violence within society; and*
- (b) sexual offences are significantly under-reported; and*
- (c) a significant number of sexual offences are committed against women, children and other vulnerable persons including persons with a cognitive impairment; and*
- (d) sexual offenders are commonly known to their victims; and*
- (e) sexual offences often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred.*

Criminal law on sexual assault

Definition of sexual assault

The definition of sexual assault should state that:

- It is an act of physical or sexual violence against a person.
- The victims and perpetrators should not be gender-specific. (See [Model Strategies](#), p. 18; and the [Combating of Rape Act, No 8, \(2000\) of Namibia](#) 2(1).)
- It is a violation of a person's bodily integrity and sexual autonomy. For example, the [Criminal Code \(1974\) of Papua New Guinea](#) states that:
 - 1) *A person who, without a person's consent –*
 - (a) touches, with any part of his body, the sexual parts of that other person; or*
 - (b) compels another person to touch, with any part of this body, the sexual parts of the accused person's own body, is guilty of a crime of sexual assault. Sec. 349*
- It is not a violation of morals or decency, or a crime against the family. (See: [UN Handbook](#) 3.4.3.1 and [Council of Europe Recommendation Rec\(2002\)5](#), #34)
- Proof of force is not required. See [Element of force](#), below.

- Proof of penetration is not required. For example, the [Penal Code \(2004\) of Turkey](#) has two categories of offences against sexual integrity; one that does not involve penetration and one that does:

Offences against Sexual Integrity; Sexual assault

ARTICLE 102– (1) The perpetrator who violates the physical integrity of another person by means of sexual conduct shall be imprisoned for a term of two to seven years upon the complaint of the victim.

(2) Where the act is committed by means of inserting an organ or a similar object to the body, the perpetrator shall be imprisoned for a term of seven to twelve years.”

**CASE STUDY: [Prosecutor v. Akayesu \(1998\)](#)
broadens definition of sexual violence.**

In Prosecutor v. Akayesu (1998), the International Criminal Tribunal for Rwanda (ICTR) convicted a Rwandan official, on the basis of his actions and failure to act in his official capacity of mass rape, forced public nudity, and sexual mutilation of Tutsi women.

The ICTR broadened the definition of rape beyond that found in the national laws, and offered this comprehensive definition of sexual violence: “...any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.” Para. 688

Element of force

Legislation on sexual assault should not include a requirement of force or violence. A separate provision should address rape with force. See [Aggravating circumstances](#) below.

Mitigating factors

Legislation should clarify that it is no defense that the perpetrator believed that the survivor was not a minor; it is no defense that an underage person consented; and it is no defense that the perpetrator was intoxicated. (See: [Model Strategies](#) 7(e), p. 34.)

False declarations of sexual assault

Legislation should not include a provision criminalizing the false declaration of a rape or sexual assault. Such provisions provide strong disincentives for victims to report the crime. In addition, some states may then accuse the victim of extra-marital sexual conduct. False allegations are commonly dealt with in other areas of a state’s legislation. (See: [Gender-Based Violence Laws in Sub-Saharan Africa](#), p. 43)

Aggravating circumstances

Legislation should include a description of aggravating circumstances. These circumstances should result in increased penalties upon conviction. (See: [UN Handbook](#), 3.11.1)

Examples of aggravating circumstances include:

- the age of the survivor;
- relationship between perpetrator and survivor;
- use or threat of use of violence;
- if the survivor suffered mental or physical injury as a result of the assault;
- multiple perpetrators or accomplices;
- use or threat of use of weapons;
- if the survivor is physically or mentally impaired; and
- multiple acts of sexual assault.

(See: [UN Handbook](#) 3.4.3.1; [Gender-Based Violence Laws in Sub-Saharan Africa](#), p. 26.)

For example, the [Crimes Act \(1900\) of New South Wales, Australia](#), includes the following description of “aggravated sexual assault.”

61J Aggravated sexual assault

(1) Any person who has sexual intercourse with another person without the consent of the other person and in circumstances of aggravation and who knows that the other person does not consent to the sexual intercourse is liable to imprisonment for 20 years.

(2) In this section, "circumstances of aggravation" means circumstances in which:

(a) at the time of, or immediately before or after, the commission of the offence, the alleged offender intentionally or recklessly inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or

(b) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or

(c) the alleged offender is in the company of another person or persons, or

(d) the alleged victim is under the age of 16 years, or

(e) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or

(f) the alleged victim has a serious physical disability, or

(g) the alleged victim has a cognitive impairment, or

(h) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence, or

(i) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence. Article 61J

Promising practice: The [Criminal Code Act \(1974\) of Papua New Guinea](#) states that circumstances of aggravation may include circumstances not described in the legislation.

Sentencing for sexual assault should be graded based on harm. For example, Canada's approach provides for penalties that increase in severity for sexual assault, sexual assault with a weapon, and sexual assault where in the perpetrator wounds, maims, disfigures or endangers the life of the complainant/survivor. (See: [Article 271 of Canada, Criminal Code \(R.S.C. 1985, c. C-46\) as amended by R.S., 1985, c. 19 \(3rd Supp.\), s. 10; 1994, c. 44, s. 19; Article 272 of Canada, Criminal Code \(R.S.C. 1985, c. 46\) as amended by 1995, c. 39, s. 145; 2008, c. 6, s. 28; 2009, c. 22, s. 10; Article 273 of Canada, Criminal Code \(R.S.C. 1985, c. C-46\) as amended by 1995, c. 39, s. 146; 2008, c. 6, s. 29; 2009, c. 22, s. 11.](#))

Sexual assault of minors

Legislation should provide for aggravated sentences for sexual assault of a minor that include sexual assaults of all persons under the age of 18. The legislation should not include gradations in sentencing that result in lesser penalties for sexual assaults of older teenagers. For example, the [Act to Amend the Penal Code \(2005\) of Liberia](#) states:

*Rape is a felony of the first degree where:
The victim was less than 18 years of age at the time the offence was committed;...*
Section 2, 14.70, 4 (a) (i).

Sexual assault of vulnerable populations

- Legislation should provide that the sexual assault of certain individuals in vulnerable populations, such as women and children in situations of armed conflict, women in custody, prostituted women, disabled or incapacitated women, women who are being transported due to infirmity or disability, and children, should constitute an aggravating factor in the sentencing phase of the prosecution. Legislation should provide that law enforcement must investigate and prosecute the case as with any other sexual assault.
- For example, the [Criminal Code \(1997\) of the Republic of Kazakhstan](#) states that rape "with the use of conditions of social disaster, or in the course of mass unrest," shall receive a penalty which is increased by 3-5 years. Article 120(3) The [Criminal Code \(2003\) of the Federation of Bosnia and Herzegovina](#) calls for an increase in sentencing for those who commit rape "out of hatred on the grounds of national or ethnic origin, race, religion, sex or language." Article 203 (4)
- For a discussion of rape as a weapon of war and its consequences, see: ["Now, The World is Without Me": An Investigation of Sexual Violence in Eastern Democratic Republic of Congo](#) (2010).

(See also: The Advocates for Human Rights, StopVAW Sections: [Sexual Assault and Vulnerable Populations](#); [Custodial Sexual Assault](#); [Women with Disabilities](#); [Sexual Assault During Armed Conflict](#); and the United Nations, [Model Strategies](#) p. 22.)

The [Crimes Act \(1900\) of New South Wales, Australia](#), includes a detailed definition of a person who is cognitively impaired in its sexual assault statutes:

For the purposes of this Division, a person has a "cognitive impairment" if the person has:

- (a) an intellectual disability, or
- (b) a developmental disorder (including an autistic spectrum disorder), or
- (c) a neurological disorder, or
- (d) dementia, or
- (e) a severe mental illness, or
- (f) a brain injury,

that results in the person requiring supervision or social habilitation in connection with daily life activities. Section 61H (1A)

Sexual assault within an intimate partner or marital relationship

- Legislation should specifically allow a husband or wife or intimate partner to be charged with sexual assault of his or her partner, whether or not they were living together at the time of the assault. Legislation should clarify that the existence of an intimate partner relationship between the parties is not a defense. (See: [Article 278 of Canada, Criminal Code \(R.S.C. 1985, c. C-46\) as amended by 1980-81-82-83, c. 125, s. 19](#); [UN Handbook](#) 3.4.3.1; and [Marital and Intimate Partner Sexual Assault](#), StopVAW, The Advocates for Human Rights.)

For example, the [Combating of Rape Act, No 8, \(2000\) of Namibia](#) states that:

"No marriage or other relationship shall constitute a defence to a charge of rape under this Act." (Section 2 (3))

- See: [Definition of domestic violence](#) in the [Domestic Violence](#) section of this Module which states: "Legislation should include the following provision in a definition of domestic violence: "No marriage or other relationship shall constitute a defence to a charge of sexual domestic violence under this legislation." (See: [UN Handbook](#) 3.4.3.1.)
- Legislation should not provide for less severe penalties for married offenders or special procedural hurdles for married survivors. (See: ["The Legal Response to Violence against Women in the United States of America: Recent Reforms and Continuing Challenges."](#) by Sally F. Goldfarb, a paper for the United Nations expert group meeting on good practices in legislation on violence against women, 2008.)

CASE STUDY:

Council of Europe body adopts resolution condemning marital rape.

In September 2009, the [Parliamentary Assembly of the Council of Europe](#) adopted a resolution recognizing rape as a serious criminal violation of women's rights and dignity, asking member states to extend their definitions of rape to include sexual violence committed by a spouse or intimate partner. [Resolution 1691 \(2009\)](#) states:

It needs to be made clear that any woman can be raped, but no woman deserves to be raped, and that consent is necessary for sexual intercourse every time, whatever the relationship of the victim with the rapist. 4

The Parliamentary Assembly recommended that member states:

“... establish marital rape as a separate offence under their domestic law so as to avoid any hindrance of legal proceedings, if they have not already done so; 5.3 [and] penalise sexual violence and rape between spouses, cohabitant partners and ex-partners, if they have not already done so; and consider whether the attacker's current or former close relationship with the victim should be an aggravating circumstance...” 5.4

The resolution also recommends that member states ensure that their legislation on rape and sexual violence reaches the highest possible standard, including providing victim support services and avoiding re-victimizing survivors through the criminal justice process.

(See: [European Policy Action Centre on Violence against Women](#), "[Council of Europe Takes a Strong Position on Rape, Including Marital Rape](#)" (22 January 2010); and [Resolution 1691 \(2009\)](#), [Parliamentary Assembly of the Council of Europe](#).)

Capacity to commit sexual assault

Legislation should not include a provision which states that a person is considered by reason of age as being physically incapable of committing a sexual assault. (See: the [Criminal Law \(Rape\) \(Amendment\) Act of Ireland \(1990\)](#), Section 6.)

Adultery

Legislation should require the repeal of any criminal offence related to adultery. In some countries, a woman who is unable to prove a case of rape may be charged with adultery. Adultery laws are often implemented only against women. (See: [Good practices in legislation on “harmful practices” against women](#), (2009), 3.3.3.3)

“Payback” rape or sexual assault

Legislation should provide that the rape or sexual assault of individuals to punish the individual's family or clan is an aggravated form of sexual assault which should be punished in accordance with country laws on aggravated rape or sexual assault. Legislation should require that exemption from punishment or reductions in sentence are prohibited. ([Good practices in legislation on “harmful practices” against women](#), (2009), 3.3.10.2.)

Compelled sexual assault or rape

Legislation should criminalize the act of compelling a third party to commit a sexual assault or rape and the act of compelling a third party to witness a sexual assault or rape. Legislation should criminalize the act of compelled self-sexual assault. (See: the [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No. 32\) \(2007\) of South Africa](#), Chapter 2.)

Sexual assaults which involve a means of recording

- Legislation should include a provision for crimes due to the use of recording. For example, the [Criminal Code Act Compilation Act \(1913\) of Western Australia](#) states:
indecent act means an indecent act which is -
 - (a) *committed in the presence of or viewed by any person; or*
 - (b) *photographed, videotaped, or recorded in any manner; to indecently record means to take, or permit to be taken, or make, or permit to be made, an indecent photograph, film, video tape, or other recording (including a sound recording);* (Chapter XXXI, 319 (1))
- The [New Jersey Code of Criminal Justice \(1979\), USA](#), includes a provision that criminalizes the disclosure of recorded materials without consent:
c. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, unless that person has consented to such disclosure. For purposes of this subsection, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be imposed for a violation of this subsection. 2C:14-9

Sexual assault involving incest

- Sexual assault in which a perpetrator assaults a person known to be related to them, legitimately or otherwise, as ancestor, descendant, brother, sister, uncle, aunt, nephew or niece, of whole or half blood, including the relationship of a parent and child by adoption or stepparent and step-child, should be considered aggravated sexual assault with enhanced penalties.
 - For example, the [Criminal Code \(2004\) of Turkey](#) provides an increased penalty for violating the physical integrity of another person by means of sexual conduct if the offence is committed "Against a person of first, second or third degree blood relation or a relative by marriage." Article 102, (3) (c)
- Consent should be irrelevant. (See: the [Sexual Offences Act \(1995\) of Antigua and Barbuda](#), Article 8 (2))

Sexual assault as a tactic of war

Legislation should provide that sexual assaults which are perpetrated as part of a war or a campaign should be prosecuted as aggravated sexual assaults with high penalties.

See: [Case Study](#) on [Prosecutor v. Akayesu](#) (1998), above.

Crimes committed in the name of “honour”

- Legislation should eliminate any defense based on “honour”.
- Legislation should require that perpetrators should not be exculpated or given lesser sentences for crimes committed in the name of “honour.”
- Legislation should not allow the defense of provocation in crimes committed in the name of “honour.”

(See: [Good practices in legislation on “harmful practices” against women](#), (2009), 3.3.3.4 and see the section on [Developing Legislation on Crimes Committed in the Name of “Honour”](#) in this Knowledge Module.)

Consent

- Legislation should define consent as unequivocal and voluntary agreement. For example, the [Crimes Act \(1900\) of New South Wales, Australia](#), states the following:
2) Meaning of consent A person “consents” to sexual intercourse if the person freely and voluntarily agrees to the sexual intercourse.
- The United Kingdom’s approach is to state that “...a person consents if he agrees by choice, and has the freedom and capacity to make that choice.” See: [Sexual Offences Act \(2003\) of United Kingdom](#), Article 74.
- Drafters should frame the issue of consent in a way that does not re-victimize the survivor. The accused should be required to establish the steps taken to ascertain whether the survivor was legally able to consent and in fact did consent. (See: [UN Handbook](#) 3.4.3.1.) Proof of lack of consent is very difficult if a survivor is not physically injured. The difficulty increases if the complainant/survivor knows the perpetrator. (See: [Model Strategies](#) p. 19.)
- A number of states include provisions describing circumstances in which, by legislative definition, consent is immaterial. These should include cases where the survivor is a minor or disabled, the accused is a psychotherapist or clergy and the assault occurred in a psychotherapy or clergy counseling session or in the context of an ongoing psychotherapist-patient or clergy-advisee relationship, and other contexts which involve the abuse of a position of authority, such as in a correctional facility.

- Legislation should also provide that any list of these circumstances should not be limited to those described in the statute. For example, [Article 273.1 \(2\) of Canada, Criminal Code \(R.S.C., 1985, c. C-46\) as amended by 1992, c. 38, s. 1](#) states that no consent is obtained when:

(a) the agreement is expressed by the words or conduct of a person other than the complainant; (b) the complainant is incapable of consenting to the activity; (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority; (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity...

The law also states that:

(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained. §273.1(3)

Promising practice: The [Sexual Offence Special Provisions Act \(1998\) of Tanzania](#) includes the positions of traditional healer and religious leader in these positions of authority. Part I, 4 (3) (d) and (e).

Consent under coercive circumstances

- Legislation on consent under coercive circumstances should describe a broad range of circumstances. Coercion can cover a wide range of behaviors, including intimidation, manipulation, threats of negative treatment (withholding a needed service or benefit), threats toward third parties, blackmail, and drug-facilitated sexual assault.
 - For example, the [Combating of Rape Act, No 8, \(2000\) of Namibia](#) includes an extensive description of coercive circumstances:

... (2) For the purposes of subsection (1) “coercive circumstances” includes, but is not limited to -

(a) the application of physical force to the complainant or to a person other than the complainant;

(b) threats (whether verbally or through conduct) of the application of physical force to the complainant or to a person other than the complainant;

(c) threats (whether verbally or through conduct) to cause harm (other than bodily harm) to the complainant or to a person other than the complainant under circumstances where it is not reasonable for the complainant to disregard the threats;

(d) circumstances where the complainant is under the age of fourteen years and the perpetrator is more than three years older than the complainant;

(e) *circumstances where the complainant is unlawfully detained;*

(f) *circumstances where the complainant is affected by -*

(i) physical disability or helplessness, mental incapacity or other inability (whether permanent or temporary); or

(ii) intoxicating liquor or any drug or other substance which mentally incapacitates the complainant; or

(iii) sleep, to such an extent that the complainant is rendered incapable of understanding the nature of the sexual act or is deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;

(g) circumstances where the complainant submits to or commits the sexual act by reason of having been induced (whether verbally or through conduct) by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed, is some other person;

(h) circumstances where as a result of the fraudulent misrepresentation of some fact by, or any fraudulent conduct on the part of, the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator, the complainant is unaware that a sexual act is being committed with him or her;

(i) circumstances where the presence of more than one person is used to intimidate the complainant.

- For other examples of legislation on coercive circumstances, see: the [Criminal Code \(1974\) of Papua New Guinea](#), Section 347A; the [Sexual Offences Act \(2003\) of Lesotho](#), Part I, 2 and Part II 6; the [Sexual Offences Act \(2003\) of United Kingdom](#), Article 61.

(See: the [UN Handbook](#) 3.4.3.1; [Consent, Force and Coercion](#), StopVAW, The Advocates for Human Rights; and [What is Sexual Assault](#), StopVAW, The Advocates for Human Rights.)

Jury instructions on consent

- Many states include a provision in their legislation that states that the judge in a relevant case must instruct the jury regarding the issue of consent. For example, the [Criminal Code Act \(1983\) of the Northern Territory of Australia](#) states:

192A Direction to jury in certain sexual offence trials

In a relevant case the judge shall direct the jury that a person is not to be regarded as having consented to an act of sexual intercourse or to an act of gross indecency only because the person:

(a) did not protest or physically resist;

(b) did not sustain physical injury; or

- (c) had, on that or an earlier occasion, consented to:
- (i) sexual intercourse; or
 - (ii) an act of gross indecency, whether or not of the same type, with the accused.
- The [Crimes Act \(1858\) of Victoria, Australia](#), includes the following provisions in its statute on jury direction on consent:
 - “...(d) that the fact that a person did not say or do anything to indicate free agreement to a sexual act at the time at which the act took place is enough to show that the act took place without that person’s free agreement;
 - (e) that the jury is not to regard a person as having freely agreed to a sexual act just because-
 - (i) she or he did not protest or physically resist; or
 - (ii) she or he did not sustain physical injury; or
 - (iii) on that or an earlier occasion, she or he freely agreed to engage in another sexual act (whether or not of the same type) with that person, or a sexual act with another person.”

Evidence

- Legislation on criminal sexual assault should state that it is unlawful to require corroboration of the survivor’s evidence. (See: [Criminal Code \(1974\) of Papua New Guinea](#); [UN Handbook](#) 3.9.7.1.)
- Legislation should create an assumption of the survivor’s credibility. (See: [UN Handbook](#) 3.9.7.1.)
- Legislation should provide that a court may not distinguish between the weight given to the testimony of a complainant, including a minor complainant, in a sexual assault case and the weight given to the testimony of any other witnesses. (See: [Combating of Rape Act](#), No. 8, (2000) of Namibia, Art. 5; [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No. 32\)](#) (2007) of South Africa, Ch. 7, sec. 60; the [Pennsylvania, USA Consolidated Statutes Crimes and Offences Act \(Title 18\), §3106](#); and [UN Handbook](#) 3.9.7.1.)
- Legislation should allow prosecution in the absence of a complainant/survivor where the complainant/survivor is not able or does not wish to give evidence. This is sometimes called absent victim prosecution. The complainant/survivor should be kept informed of all stages of the court proceedings. (See: [UN Handbook](#) 3.9.5.)
- Legislation should prevent the introduction of the survivor’s sexual history in both civil and criminal proceedings either during the trial or during the sentencing phase where it is unrelated to the case (sometimes called a “rape shield law”).

Many victims of rape and sexual assault have felt re-victimized when questioned by defense attorneys about details of their private sexual conduct. Rape shield laws are designed to prevent introduction of a victim's sexual behavior that is unrelated to the acts that are the subject of the legal proceedings. (See: [UN Handbook](#) 3.9.7.2; [Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), 15 (e); and ["The Legal Response to Violence against Women in the United States of America: Recent Reforms and Continuing Challenges."](#) by Sally F. Goldfarb, a paper for the United Nations expert group meeting on good practices in legislation on violence against women, 2008. p. 10.)

Canada's approach is to state that:

evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant

(a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or

(b) is less worthy of belief.

The judge, under Canadian law, must determine that the evidence is about specific incidents of sexual activity, is relevant to the issue at trial, and that it has "significant probative value" that is not substantially outweighed by the danger of prejudice to the proper administration of justice. [Article 276 of Canada, Criminal Code \(R.S.C. 1985, c. C-46\) as amended by R.S., 1985, c. 19 \(3rd Supp.\), s. 12; 1992, c. 38, s. 2; 2002, c. 13, s. 13.](#)

- See: *Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS* (2009), Vol. 1, Module 1; available in [English](#), p. 1-24, for additional factors in determining admissibility of evidence.
 - The [Combating of Rape Act](#), No. 8, (2000) of Namibia states that no evidence about the complainant's previous sexual activity may be allowed unless the court determines that it:
 - (a) tends to rebut evidence that was previously adduced by the prosecution; or*
 - (b) tends to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue; or*
 - (c) is so fundamental to the accused's defence that to exclude it would violate the constitutional rights of the accused:*

Provided that such evidence or questioning has significant probative value that is not substantially outweighed by its potential prejudice to the complainant's personal dignity and right of privacy. Art. 18

Promising practice: [USA Federal Rule of Evidence 412](#), which allows for rape shield laws in both civil and criminal proceedings.

- Legislation should provide that if late applications for admissibility of a victim's previous sexual history are allowed, an adjournment must occur in order that the prosecution has the opportunity to explain the situation to the victim and to review the state's position on the relevancy of the evidence.

See more provisions on evidence in [Rights of survivors](#).

Personal records

Legislation should provide that no records of personal information shall be admissible in sexual assault proceedings, unless the survivor or witness to whom the record relates has consented in writing to the disclosure of the personal record. [Article 278.1 of Canada, Criminal Code \(R.S.C. 1985, c. C-46\) as amended by 1997, c. 30, s. 1](#) defines a "record" as follows:

... "record" means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes, without limiting the generality of the foregoing, medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.

Medical and forensic evidence

- Legislation should mandate the timely testing, collection, and preservation of medical and forensic evidence.
- Legislation should state that a survivor, including a minor survivor, may receive a medical and forensic examination regardless of whether or not the survivor reports to law enforcement. In countries with mandatory reporting laws, legislation should require mandatory reporters to provide a full explanation of laws and policies to the survivor when a report is required.

For example, The [Violence Against Women Act \(2005\)](#) of the United States requires states to certify that victims of sexual assault are not required "...to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both." (42 U.S.C.A. § 3796gg-4 (d) (1))

- Legislation should state that the survivor, including a minor survivor, may be examined and treated by a forensic doctor or other medical practitioner without the consent of any other person.
- Legislation should state when the survivor is referred for medical examination, the examination should be done at the expense of the state. (See: [Sexual Offences Act \(2003\) of Lesotho](#), Part VI, 21 (1).)
- Legislation should state that medical and forensic evidence are not required for a sexual assault conviction.
- Legislation should allow the presentation of expert testimony on common victim behavior on this issue. Jurors who are exposed to relevant social and psychological research on victim behavior can more accurately evaluate victim credibility. For example, many jurors may not understand that it is common for rape victims to not fight back during the rape, and to wait to report the rape. Defense attorneys may pose this behavior as unusual for rape victims, thereby undermining victim credibility. (See: [Turning Mirrors Into Windows? Assessing the Impact of \(Mock\) Juror Education in Rape Trials](#), 49 Brit. J. Criminology (2009).)

For example, Pennsylvania, USA, has draft legislation as follows:

§5920(2)(b): In an action subject to this [sexual assault] section testimony by an expert qualified by the court regarding any recognized and accepted form of post-traumatic stress disorder and any recognized or accepted counterintuitive victim behavior shall be admissible.
[Pennsylvania House Bill No. 2255, 2010 Session.](#)

- Legislation should require protocols to store unreported evidence. Legislation should require that notice be given to the survivor regarding how long such evidence will remain viable for a report, should the survivor decide to report.

CASE STUDY- Human Rights Watch Report
Testing Justice: The Rape Kit Backlog in Los Angeles City and County

In 2009, Human Rights Watch released the report [Testing Justice: The Rape Kit Backlog in Los Angeles City and County](#). The report found that, as of March 1, 2009, there were over 12,000 untested rape kits in storage facilities in these locations. Rape kits are comprised of evidence which is carefully collected from the victim when the rape is reported: DNA from every part of the victim's body touched by the rapist; photographs of injuries, including magnified photographs of tears or other injuries to the victim's genital area; fingernail scrapings; and blood and urine samples. This evidence is sealed into a large envelope and stored with police. The evidence from the kits may not only identify the assailant, it may corroborate future testimony about the assault, or connect the assailant to other victims.

The report found that although victims may believe that the evidence is automatically tested, and that no word from the police meant that they could not identify the attacker, thousands of rape kits remained untested. In some cases, the kits are from cases which are now past the 10-year statute of limitations for rape in California and can no longer be prosecuted. Untested kits can also mean that rapists remain at large.

The report revealed that although the police and sheriff's departments received federal funds to address the backlog of untested kits, the number of untested kits continued to grow. It found that officials sometimes delayed ordering kits to be tested when they did not believe that a crime had occurred..

Human Rights Watch called upon the Los Angeles Police and Sheriff's Departments to meet US obligations under international law and ensure justice to victims of sexual violence by:

- Preserving every booked rape kit until it is tested.
- Enforcing policy which requires the testing of every booked rape kit.
- Identifying resources needed to test each kit and pursuing investigative leads from the kits.
- Prioritizing funding which is necessary to implement rape kit testing and investigation of cases.
- Implementing a system to inform victims of the status of their rape kit test.

The Los Angeles law enforcement officials have agreed to test all rape kits in the backlog and all those collected in the future.

(See: Sections on [Rights of Survivors](#) and [Survivor Services](#), below.)

Prompt complaint

Legislation should state that no adverse inference shall be drawn from a delay between the act of violence and the reporting of the act of violence. The judicial officer should be required by the legislation to so inform the jury.

For example, the [Combating of Rape Act, No 8, \(2000\) of Namibia](#) states:

7. In criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any inference only from the length of the delay between the commission of the sexual or indecent act and the laying of a complaint. Sec. 7

(See also: the [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No. 32\)](#) of South Africa, Section 59; and the [UN Handbook](#), 3.9.6.)

Promising practice: The [Sexual Offences Act \(1992\) of Barbados](#) requires the court to warn the jury if evidence is given or a question is asked that may suggest that the complainant/survivor did not issue a complaint or delayed in making the complaint. It requires the court to state that this does not necessarily indicate that the allegation is false, and the court must inform the jury that there may be good reasons why a victim of a sexual assault might hesitate to make, or might not make, a complaint about the assault. (Article 29)

Mediation

Legislation should not allow mediation in cases of sexual assault at any stage of the process. (See: [UN Handbook](#), 3.9.1.)

Provocation

Legislation should not allow provocation as a defense to sexual assault. (See: [Model Strategies](#), 7(d) p. 33.)

Other means of reconciliation

Legislation should not allow perpetrators to avoid punishment by reaching an agreement with the family of the victim/survivor or by providing the family with payment. (See: [Good practices in legislation on “harmful practices” against women](#) (2010), 3.6.1; [Gender-Based Violence Laws in Sub-Saharan Africa](#), p. 32.)

Marriage between perpetrator and survivor

Legislation should remove any exemption from punishment for perpetrators of sexual assault who marry the survivor. (See: [Good practices in legislation on “harmful practices” against women](#) (2010), 3.3.7.3.) Legislation should explicitly prohibit sexual assault cases from being dismissed upon the marriage of the perpetrator and survivor. Legislation should state that if a marriage occurs between the perpetrator and survivor, the case should be examined and considered for prosecution as a forced marriage.

(See: The section on [Forced and Child Marriage](#) of this Knowledge Module.)

Firearms restrictions

Legislation should prohibit or restrict the purchase, possession and use of firearms and other regulated weapons by offenders convicted of sexual assault.

(See: [Violence Prevention: the evidence](#) (World Health Organization, 2009), which states that when access to firearms is restricted lives, families, and costs are saved.)

Sentencing

- Drafters should ensure that legislation on sexual assault contains sentencing guidelines so that sentences for sexual assault are consistent country-wide and are commensurate with the gravity of the crime. For example, see [Sentencing Guidelines for the United Kingdom](#) on the [Sexual Offences Act \(2003\) of United Kingdom](#); and [UN Handbook](#), 3.11.1. For a list of goals in sentencing, see: [Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), March 2009, 17(a).
- Legislation should state that evidence of prior acts of violence, including abuse, stalking or exploitation, should be considered in the sentencing guidelines. (See: [Model Strategies](#), 7(f) p.34.)
- Legislation should not contain lesser penalties for particular classifications of survivors, such as prostituted women or non-virgins. (See: [UN Handbook](#), 3.11.2.)

Plea agreements and bail or conditional pre-trial release decisions

- Legislation should require that judicial officers who determine bail decisions that allow the pre-trial release of an offender shall examine the dangers of each particular case of sexual assault as to the individual survivor as well as society and to delineate conditions designed for survivor safety. (See: [The Toolkit to End Violence Against Women](#), p. 13; and [Lethality or risk assessments](#) in the section on [Developing Legislation on Domestic Violence](#).)

For example the [Criminal Procedure Code of Minnesota, USA](#) states:

(a) When a person is arrested for a crime against the person, the judge before whom the arrested person is taken shall review the facts surrounding the arrest and detention. If the person was arrested or detained for committing a crime of violence...the prosecutor or other appropriate person shall present relevant information involving the victim or the victim's family's account of the alleged crime to the judge to be considered in determining the arrested person's release. The arrested person must be ordered released pending trial or hearing on the person's personal recognizance or on an order to appear or upon the execution of an unsecured bond in a specified amount unless the judge determines that release (1) will be inimical to public safety, (2) will create a threat of bodily harm to the arrested person, the victim of the alleged crime, or another, or (3) will not reasonably assure the appearance of the arrested person at subsequent proceedings. §629.715 Subdv.1(a)

- Legislation should require that plea agreements (allowing defendants to plead guilty to a lesser charge) in sexual assault, harassment and stalking cases should be carefully examined and decided with survivor safety the foremost consideration. Besides the risk of flight, such factors as intimidation of the survivor or the survivor's children and risk of harm to the same should be considered. (See: [The Toolkit to End Violence Against Women](#), p.13, p.16.)
- Legislation should require that judicial officers receive input from the survivor which is relevant to plea and bail consideration. See section on: [Notification of case progress and disposition](#).

Promising practice: The [Sexual Offences Act \(2003\) of Lesotho](#) states that in a bail application proceeding, a complainant has the right to “request the prosecutor in the proceedings to present any evidence to the court that may be relevant to any question under consideration by the court in the proceedings. Part VII, 28 (2)

Roles and responsibilities of police

- Legislation should provide that the responding officers shall provide the survivor with transport to the forensic medical facility if needed.
- Legislation should require that police coordinate with prosecutors, medical support services, survivor support groups and advocacy agencies. (See: [UN Handbook](#), 3.2.4; and [Violence Against Women in Melanesia and East Timor: A Review of International Lessons](#), Ch. 5.)

For example, [The Rape Victim Assistance and Protection Act \(1998\) of Philippines](#) states that:

Upon receipt by the police of the complaint for rape, it shall be the duty of the police officer to:(a) Immediately refer the case to the prosecutor for inquest/investigation if the accused is detained; otherwise, the rules of court shall apply; (b) Arrange for counselling and medical services for the offended party; and (c) Immediately make a report on the action taken. Section 4

- Legislation should provide that police refer victims to coordinated sexual assault response teams or programs to give survivors a broad range of necessary care and services (legal, medical, and social services) and to increase the likelihood that the assault can be successfully prosecuted. (See the section on [Survivor Services](#), below. See also: [Sexual Assault Response Teams](#), The Advocates for Human Rights, stopvaw.org website)
- Legislation should require the development of police protocols that are centered upon survivor safety and efficient, respectful investigation of sexual assaults.

- Legislation should require that police receive training on a regular basis on the latest information about sexual assault survivors and the most respectful methods of handling these trauma survivors. (See: "[Sexual assault: key issues](#)," *Journal of the Royal Society of Medicine*, Vol. 100 (2007). The lack of police training can contribute to low rates of reporting. See: [Africa for Women's Rights: Ratify and Respect! Dossier of Claims](#) (2010).)
- Legislation should provide for the application of pro-arrest and pro-prosecution policies in cases of sexual assault where there is probable cause that the crime has occurred. (See: [UN Handbook](#), 3.8.3.)
- Legislation should state that police must develop protocols for survivor interview and medical testing in order that the survivor may be questioned and examined in a confidential, respectful and timely manner for successful evidence use at trial. (See: [Model Strategies](#), 8(b) p. 41, [UN Handbook](#) 3.8.)
- Legislation should require police departments to regularly review sexual assault cases to ensure compliance with procedures and to sanction officers as necessary.
- Legislation should require police to promptly complete detailed reports of sexual assaults and to make them available to survivors, as reports aid survivors in pursuing protection orders, civil remedies, immigration petitions, insurance benefits, and compensation claims. (See: [The Toolkit to End Violence Against Women](#).)
- Legislation should mandate specialized police units with specialized training on sexual assault response and investigation. All-women sexual assault investigative teams and police stations with dedicated rooms should be available so that the survivor of a sexual assault is comfortable in speaking to police. (See: [Model Strategies](#) p. 41 and [The Toolkit to End Violence Against Women](#).)

Promising practices:

Sierra Leone: The Sierra Leone police have established Family Support Units (FSUs) in police stations throughout the country. The FSUs are comprised of police who have been trained to work with victims of sexual violence. They provide sensitive and appropriate assistance to victims, refer them to cost-free medical care and legal services, and educate the public on all areas of gender-based violence. Since the inception of FSUs, reports of sexual violence have increased in Sierra Leone, and a UNICEF assessment found that the stigma associated with sexual exploitation and abuse has been reduced. See: [Women Building Peace and Preventing Sexual Violence in Conflict-Affected Contexts: A Review of Community-Based Approaches](#) (2007), p. 11.

Philippines: [The Rape Victim Assistance and Protection Act \(1998\) of Philippines](#) states that:

It shall be the duty of the police officer or the examining physician, who must be of the same gender as the offended party, to ensure that only persons expressly authorized by the offended party shall be allowed inside the room where the investigation or medical or physical examination is being conducted.

For this purpose, a women's desk must be established in every police precinct throughout the country to provide a police woman to conduct investigation of complaints of women rape victims. Section 4 (c)

- Legislation should mandate the dedication of resources to police for investigation of sexual assault cases so that cases are not under-funded or ignored as “domestic” cases.

See: [CASE STUDY: Human Rights Watch Report: Testing Justice: The Rape Kit Backlog in Los Angeles City and County](#), above.

- Legislation should mandate that police response to sexual assault cases, and the number of cases which are prosecuted, be reviewed by an independent task force to take note of compliance with established procedures and of offender accountability statistics. See [Model Strategies](#), 8(e) p.44.

For example, The Kentucky Association of Sexual Assault Programs has developed [recommendations](#) (PDF, 22 pages) for official responses to sexual assault. Also, see: "[Form for Evaluating Police Response to Rape and Sexual Assault](#)," [Women's Justice Centre](#)

See: [Protocols and Polices](#), StopVAW, The Advocates for Human Rights.

Roles and responsibilities of prosecutors

- Legislation should include pro-prosecution policies in cases of sexual assault.
- Legislation should require prosecutor protocols that allow for prosecution of offenders in the absence of the survivor.
- Legislation should require prosecutor training in the use of physical evidence, expert witnesses and other trial strategies to strengthen cases in which a victim is unavailable to testify.
- Legislation should require prosecutors to carefully consider all factors underlying a survivor's hesitation or decision not to testify, including cultural and religious beliefs, before forcing a survivor to testify.
- Legislation should require prosecutors to receive training on the nature and impact of sexual assault, harassment and stalking, factors that may affect a survivor's willingness or ability to participate in a prosecution, and effective prosecution strategies and approaches that support victim safety. The lack of prosecutor training can contribute to low rates of reporting and prosecution. (See: [Africa for Women's Rights: Ratify and Respect! Dossier of Claims](#) (2010))
- Legislation should require prosecutors to consider victim impact statements in all cases of sexual assault.
- Legislation should require prosecutors to inform survivors of all aspects of the prosecution of the case, including details about specific times and dates for hearings.
- Legislation should require prosecutors to inform survivors of available support and protection mechanisms and opportunities to obtain restitution and compensation.
- Legislation should require prosecutors who drop cases of sexual assault to explain to the survivor why the case was dropped. (See section on [Rights of Survivors](#), below.)
- Legislation should require prosecutors to provide information to survivors about civil remedies such as protective orders when prosecutors decline to prosecute.

For example, a [2009 Minnesota, USA law on victim notification](#) states:

...c) Whenever a prosecutor notifies a victim of domestic assault, criminal sexual conduct, or harassment under this section, the prosecutor shall also inform the victim of the method and benefits of seeking an order for protection [...] or a restraining order [...] and that the victim may seek an order without paying a fee. §611A.0315 1(c).

- Legislation should require prosecutors to avoid delays in completing the trial of the offender.

(See: [UN Handbook](#), 3.8.2 and 3.8.3; [The Toolkit to End Violence Against Women](#); and [Prosecutor Protocols](#), StopVAW, The Advocates for Human Rights.)

Treatment or diversion programs for perpetrators

Legislation should provide that if intervention, treatment or diversion programs (pretrial diversion programs are alternatives to prosecution which seek to divert offenders with no prior offences from traditional criminal justice processing into a program of supervision and services) are prescribed for perpetrators, the operators of such programs must work in close cooperation with survivor service providers to enable constant feedback from the complainant/survivor about the recurrence of violence. Legislation should provide that all sentences to alternative, treatment, or diversion programs are to be handed down only in cases where there will be continuous monitoring of the case by justice officials and survivor organizations to ensure the survivor's safety and the effectiveness of the sentence. Legislation should require that such alternative sentences be monitored and reviewed on a regular basis. Legislation should require immediate reports to probation officers and police about recurring violence. (See: [UN Handbook](#) 3.11.6; [The Toolkit to End Violence Against Women](#), p. 14)

For example, the [Criminalization of Violence against Women Law \(2007\) of Costa Rica](#) (Spanish only) includes detailed conditions on when alternative sentences may be imposed, and on the alternatives which are available. Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) (2004) provides for suspension of certain penalties (under two years in jail) if the perpetrator participates in an intervention programme. (Article 35)

Sex offender registration

Legislation should require convicted sex offenders to register their location and employment with law enforcement agencies upon release from incarceration. (See: the [Sexual Offences Act](#) (2003) of United Kingdom, Sections 80 et. seq. The [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No. 32\)](#) of South Africa contains detailed provisions on establishing a National Register for Sex Offenders. Ch. 6. The [Sexual Offences Act \(No.3\) \(2006\) of Kenya](#) contains detailed provisions for establishing a Register for Convicted Sex Offenders and contains Sexual Offences (Dangerous Offenders DNA Data Bank) Regulations, 2008.)

Rights of Survivors

- Legislation should provide that survivors have the right not to be discriminated against, at any step of the process, because of race, gender, or sexual orientation. (See: [UN Handbook](#), 3.1.3.)
- Legislation should provide that the survivor may have access, free of cost, to a sexual assault survivor advocate, who will be available to assist the survivor at all steps of the legal and forensic process.
- Legislation should provide that sexual assault survivor advocates may not disclose any opinion or information received from or about the victim without the consent of the victim. See: [Law of Minnesota, USA, §595.02](#) (2009). Minnesota law provides a specific definition of a “sexual assault counselor” who may access this privilege:

"Sexual assault counselor" for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault. Minn. Stat. §595.02 (1) (k).
- Legislation should provide survivors with free legal aid in all court proceedings, with free court support, free access to interpreters and free translation of legal documents, where requested or required. (See: [The Rape Victim Assistance and Protection Act \(1998\) of Philippines](#), Guanzon, Rowena V., [“Laws on Violence against Women in the Philippines”](#) Expert paper prepared for the Expert Group Meeting on good practices in legislation on violence against women 2008), p.12)
- Legislation should provide for a comprehensive range of health services which address the physical and mental consequences of the sexual assault. Legislation should provide that a comprehensive range of health services is available within one day’s travel to all citizens.

For example, in [Africa for Women’s Rights: Ratify and Respect! Dossier of Claims](#) (2010), which summarizes the statutory laws, customary laws, traditions, and practices on women’s human rights in over thirty African countries, the authors noted that the unavailability of medical personnel contributed to the low rate of reporting of rape in some countries.
- Legislation should provide that victims who are minors have full access to a comprehensive range of health services which address the physical and mental consequences of the sexual assault without the consent of any other person.
- Legislation should provide that access to these services need not occur within a particular time frame and that access is not conditional in any respect.
- See: World Health Organization, *“Guidelines for Medico-Legal Care for Victims of Sexual Violence”* (2003), available in [English](#).

Promising practice: The [Amendment to the Criminal Procedure Code](#) (2006) of Austria entitles victims of sexual offences or dangerous threats, and their intimate partner or relative who was a witness to the offence, to psychosocial and legal assistance. The Code also authorizes funding to support court accompaniment for victims.

- Legislation should provide that the costs of medical examination to gather and preserve evidence for criminal sexual conduct shall be paid for by a local government body in which the sexual assault occurred. (See: [Sexual Offences Act \(2003\) of Lesotho](#), Part VI, 21 (1).)
- Legislation should provide for cost-free and unconditional tests for sexually transmitted diseases, for emergency contraception, pregnancy tests, abortion services, or post-exposure prophylaxis (PEP) to all victims of sexual assault, including minor victims of sexual assault. (See: Division of Reproductive Health, Government of Kenya, [National Guidelines Medical Management of Rape/Sexual Violence \(2004\)](#), p. 7.)

Post-exposure prophylaxis (PEP) is “short-term antiretroviral treatment to reduce the likelihood of HIV infection after potential exposure, either occupationally or through sexual intercourse.” From: [World Health Organization](#). (See: Stefiszyn, “[A Brief Overview of Recent Developments in Sexual Offences Legislation in Southern Africa](#),” Expert paper prepared for the Expert Group Meeting on good practices in legislation on violence against women, May 2008.)

For example, the law of Minnesota, USA, states that hospitals must offer information and services to all female sexual assault victims on emergency contraception:

(a) It shall be the standard of care for all hospitals that provide emergency care to, at a minimum:

(1) provide each female sexual assault victim with medically and factually accurate and unbiased written and oral information about emergency contraception from the American College of Obstetricians and Gynecologists and distributed to all hospitals by the Department of Health;

(2) orally inform each female sexual assault victim of the option of being provided with emergency contraception at the hospital; and

(3) immediately provide emergency contraception to each sexual assault victim who requests it provided it is not medically contraindicated and is ordered by a legal prescriber...[Minn.Stat.§145.4712](#) (2009).

Promising practice: the [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No. 32\) of South Africa](#) provides that when a survivor reports a sexual assault to the police or a medical practitioner, the survivor must be informed of the importance of obtaining PEP within 72 hours of the assault and of the need to obtain information about sexually transmitted diseases. Ch. 5, 28 (3).

Promising practices: The Kenyan Ministry of Health has issued National Guidelines calling for the provision of PEP to victims of rape free of charge. See: Division of Reproductive Health, Government of Kenya, [National Guidelines Medical Management of Rape/Sexual Violence \(2004\)](#)

- Legislation should provide for confidentiality of the survivor. She should have the right to request that law enforcement withhold her identity from the public and media. Legislation should give the prosecutor or judge the discretion not to disclose identifying information about a witness or survivor.
- Legislation should provide for specialized courts or special court procedures which will ensure timely handling of sexual assault cases. (See: [UN Handbook](#), 3.2.5)
- Legislation should provide that courts minimize the number of times survivors must testify, so that the survivor is not re-victimized/traumatized. (See: Johnson, Funmi, "[The Struggle for Justice: The State's Response to Violence Against Women](#)," Expert paper prepared for the Expert Group Meeting on good practices in legislation on violence against women (2008), p.6, the [Model Strategies](#),7(c) p.30)

For example, the [Prevention and Elimination of Violence Against Women and Gender Violence Law \(2008\) of San Marino](#) provides that "[t]he examination of the victim in court [in preliminary proceedings] shall take place so as to avoid having to repeat it. To this end, the Investigating Judge shall adopt any appropriate measure, including having the examination videotaped." Title II, Art.23.

- Legislation should provide that if the accused is not represented by counsel, the survivor may not be examined, cross-examined, or re-examined by the accused, but must be examined by another person appointed by the court. Legislation should also provide that the court may order, in its discretion, that a witness may not be examined, cross-examined, or re-examined by the accused, but may be examined by another person appointed by the court. (See: [Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS](#) (2009), Volume 1 Module 1, p. 1-38.)
- Legislation should allow for courtroom closure if constitutionally possible. See: [The Rape Victim Assistance and Protection Act \(1998\) of Philippines](#), Section 5, [UN Handbook](#) p. 3.9.4, Johnson, Funmi, "[The Struggle for Justice: The State's Response to Violence Against Women](#)," Expert paper prepared for the Expert Group Meeting on good practices in legislation on violence against women (2008), p. 5
- Legislation should provide that if testimony by alternate means is not feasible, the survivor or witness can attain some protection within the structure of the court appearance. Examples include: Police escorts to and from the hearings, shielding the survivor's appearance from the offender, separate waiting areas, in-camera proceedings, witness protection boxes, closed circuit television, etc. See: [UN Handbook](#) 3.9.4, [Model Strategies](#) 7(c) p. 31.

For example, The [Amendment to the Criminal Procedure Code \(2006\) of Austria](#) allows certain witnesses and victims who are very young or vulnerable to be questioned using audio and visual transmissions so they may not be re-victimized. § 165, § 250.

Promising practice: The [Law on Criminal Procedure \(2004\) of Montenegro](#) allows for a separate room for victim interrogation in the court process and also that the victim has the right to have the proceedings conducted by a judge of the same sex, if it is possible given the existing composition of court staff. Articles 101(5) and 58(4).

- Legislation should provide that where safety cannot be guaranteed to the victim, refusing to testify will not constitute a criminal or other offense. (See: [Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), 15 (c).)
- Legislation should allow a gag on all publicity about individuals involved in the case and legislation should provide for sanctions in case of violations. (See: [UN Handbook](#), 3.9.4; [Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS](#) (2009), Volume 1 Module 1, p. 1-34.)

Protection and no contact orders

- Legislation should provide that the survivor has the right to apply for no contact orders and orders for protection in the criminal justice system. Legislation should provide that survivors also have the right to apply for civil emergency protection orders and long-term civil orders for protection free-of-charge against the suspect in a sexual assault case.

For example, the [Law on Access of Women to a Life Free of Violence \(2007\) of Mexico](#) provides for protection orders against any form of violence defined in the act, including domestic violence, femicide, and violence in the community. And, the [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) (2004) of Spain states that its provisions on protection orders shall be compatible in civil or criminal proceedings. (Article 61)

For information on orders for protection, see provisions on [Orders for Protection](#) in the [Domestic Violence](#) section of this Module.

- No contact orders and orders for protection should contain specific prohibitions. For example, the law of [New Jersey](#), USA, states that:

2.a. When a defendant charged with a sex offence is released from custody before trial on bail or personal recognizance, the court authorizing the release may, as a condition of release, issue an order prohibiting the defendant from

having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, and from harassing or stalking the victim or the victim's relatives in any way.

b. The written court order releasing the defendant shall contain the court's directives specifically restricting the defendant's ability to have contact with the victim or the victim's friends, co-workers or relatives. The clerk of the court or other person designated by the court shall provide a copy of this order to the victim forthwith.

c. The victim's location shall remain confidential and shall not appear on any documents or records to which the defendant has access.

Promising practice: The [Combating of Rape Act](#), No. 8 (2000) of Namibia requires that a no contact order be included in the bail conditions: Section 13

For more information on the contents of orders for protection, see [Orders for Protection](#) in the [Domestic Violence](#) section of this Module.

- Legislation should provide that the first responders such as the police or health professionals must provide the survivor with written notice of the right to an order for protection, the procedures which are to be followed to obtain both an emergency order and a longer term order for protection, and a name and telephone number that the survivor may utilize if the survivor has questions about the order or the process.
- Legislation should state that protection orders are to be issued in addition to, and not in lieu of any other legal proceedings. There should be no requirement that a survivor institute other legal proceedings in order to obtain an order for protection. Legislation should allow the order for protection to be utilized as a material fact in other legal proceedings. (See: [UN Handbook](#) 3.10.2)
- Legislation should provide that, in some cases, emergency and long-term orders for protection may need to be issued against more than one person or a group of persons, such as a tribe or extended family. (See: [Good practices in legislation on "harmful practices" against women](#) (2010), 3.5.1)
- Legislation should provide that violations of orders for protection are a criminal offence. Hearings for violations of protection orders should be held quickly in order to promote safety, limit opportunities to intimidate victims and deter crime. See: [The Toolkit to End Violence Against Women](#), Ch.3.

For more information on safety planning for survivors of sexual assault, see [Rape, Abuse and Incest National Network](#), last acc. 2/11/10; Safe Horizon, [Create a Safety Plan](#), last acc. 2/11/10; and [CADA](#), last acc. 2/11/10.

Courtroom safety

- Legislation should provide that courtroom safety protocols are mandated for all criminal courtrooms. See [Model Strategies](#) 7(h), p.36-37; and [Council of Europe General Recommendation \(2002\)5 of the Committee of Ministers to member States on the protection of women against violence adopted on 30 April 2002 and Explanatory Memorandum](#), App 43ff. For example, the [Rome Statute of the International Criminal Court](#) states that:

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. Art. 68

- Legislation should provide that survivor waiting rooms are staffed by law enforcement personnel.
- Legislation should provide for judicial training which promotes an effective judicial response to threats or acts of violence in the courtroom. This can include enhanced victim protection and swift and public disposition of charges in order to promote confidence in the safety of the legal process. (See: [The Toolkit to End Violence Against Women](#) p. 10.)
- Legislation should provide that victims of sexual assault cases are notified of witness protection programs. (See: [UN Handbook](#) 3.9.4.)

See:

- Office of the Prosecutor of the International Criminal Tribunal for Rwanda, *Best Practice Manual for the Investigation and Prosecution of Sexual Violence Crimes in Situations of Armed Conflict: Lessons from the International Criminal Tribunal for Rwanda* (2008), which provides recommendations for creating an “enabling courtroom environment.” Available in [English](#).
- United Nations Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*; available in [English](#).

Other Measures

Employer support or retaliation

Legislation should provide that an employer must allow a survivor or a witness, or her spouse or family, who is requested or subpoenaed by the prosecutor to attend court for the purpose of giving testimony, reasonable time off from work to attend criminal proceedings for the case. Legislation should provide that an employer who discharges, disciplines, penalizes or threatens an employee who took time off under the provisions described above is guilty of a misdemeanor and must offer the employee job reinstatement and payment of back wages as appropriate. (See: [Minnesota, USA Statute §611A.036](#); [UN Handbook 3.6.3](#); and [Organic Act on Integrated Protection Measures against Gender Violence \(2004\) of Spain](#), Article 21.)

Restitution and compensation for survivors

- Legislation should provide that a survivor of a sexual assault has the right to receive restitution as part of the criminal case against the offender if the offender is convicted. Legislation should provide for the creation of a government-sponsored compensation program which entitles survivors to apply for and receive fair compensation. ([UN Handbook 3.11.5](#))
- Legislation should provide that the request for restitution may include out-of-pocket expenses resulting from the crime, such as medical or therapy costs, replacement of wages, tuition costs, relocation costs, and services lost due to the crime, funeral expenses, and other expenses not itemized here but incurred as a result of the crime, including funds expended for participation in the legal process. Legislation should provide a mechanism for restitution requests and payment, and for review of compliance with restitution awards. (See: [Organic Act on Integrated Protection Measures against Gender Violence \(2004\) of Spain](#); and the [Criminal Code Act \(1974\) of Papua New Guinea](#).)
- Compensation should not be a substitute for other penalties. ([UN Handbook 3.11.5](#))

CASE STUDY:

War Reparations Provided for Victims of Sexual Violence in Sierra Leone

For the first time in history, war reparations are being directed towards women as a means to address the critical needs of victims of sexual violence. An initiative sponsored by the German government is allowing the [International Organization for Migration](#) (IOM) to work in partnership with the Sierra Leone Reparations Program (SLRP) to assist women who suffered brutal forms of violence during the country's long-running civil war, which ended in 2002.

The IOM provides both technical assistance and expertise to SLRP and aims to directly assist over 600 women by providing trauma counseling, vocational training, and cash allowances to help set up income-generating opportunities. Through these activities, IOM hopes to see these women begin to recover and escape the detrimental stigmas and feelings of abandonment and neglect that often follow acts of sexual violence. See: "[IOM Provides Technical Assistance to Reparations Programme for Victims of Sexual Violence in Sierra Leone](#)", [International Organization for Migration](#) (23 March 2010).

Notification of case progress and disposition

- Legislation should require that prosecutors keep victims informed of all stages of case progression, of releases considered or granted, of all hearings and dispositions.
- Legislation should require the prosecutor to make a reasonable and good faith effort to inform the survivor of a pending plea agreement for the offender before it is implemented, including the amount of time recommended for the offender to serve in prison were the court to accept the agreement. Legislation should require the prosecutor to receive input from the survivor which is relevant to bail and plea agreements.

For example, the [Sexual Offences Act \(2003\) of Lesotho](#) states that:

In any criminal proceedings where an accused is charged with an offence of a sexual nature, the prosecutor shall consult with the complainant in the proceedings in order to-

- (a) ensure that any information relevant to the trial is obtained from the complainant, including information relevant to the question whether the accused is to be released on bail and, if the accused were so released, whether any conditions of bail are to be imposed;*
- (b) orientate the complainant with the court structure and procedures; and*
- (c) provide any information to the complainant necessary to lessen the impact of the trial on the complainant. Part VII, 29*

The [Combating of Rape Act No 8, \(2000\) of Namibia](#) includes the following provision:

In criminal proceedings at which an accused is charged with an offence of a sexual nature, it shall be the duty of the prosecutor to consult with the complainant in such proceedings in order –

- (a) to ensure that all information relevant to the trial has been obtained from the complainant, including information relevant to the question whether the accused should be released on bail and, if the accused were so released, whether any conditions of bail should be imposed; and*
- (b) to provide all such information to the complainant as will be necessary to lessen the impact of the trial on the complainant. Section 9*

- Legislation should provide that the survivor has the right to be present at the sentencing hearing and at the hearing for the plea agreement.
- Legislation should provide that the survivor has the right to present objections, orally, in writing, or through the prosecutor, to the plea agreement or the proposed disposition, to the court.

The [Combating of Rape Act No 8, \(2000\) of Namibia](#) states that:

(1) A complainant of rape shall have the right -

(a) to attend any proceedings where the question is considered whether an accused who is in custody on a charge of rape should be released on bail or, if bail has been granted to the accused, whether any further conditions of bail should be imposed under section 62 or whether any such conditions of bail should be amended or supplemented under section 63; and

(b) to request the prosecutor in proceedings referred to in paragraph (a) to present any information or evidence to the court that might be relevant to any question under consideration by the court in such proceedings. Section 12

- Legislation should provide that the survivor may request that the trial be commenced within 60 days of the demand. Speedy judicial proceedings are essential to successful judicial proceedings and to the healing of the survivor. Prosecutors should be required to make reasonable efforts to comply with the victim's request.
- Legislation should require that the prosecutor make every reasonable effort to notify and seek input from the survivor before referring an offender into any treatment or diversion program in lieu of prosecution for a sexual assault. (See: [Minnesota, USA Statute §611A.031](#)) Pretrial diversion is an alternative to prosecution which seeks to divert certain offenders with no prior offences from traditional criminal justice processing into a program of supervision and services. In the majority of cases, offenders are diverted at the pre-charge stage. Participants who successfully complete the program will not be charged or, if charged, will have the charges against them dismissed; unsuccessful participants are returned for prosecution. (See: [US Attorney Criminal Resource Manual, Ch. 9.22.000](#))
- Legislation should include a provision which states that the survivor may challenge the prosecutor's decision to discontinue the case. (See: Parliamentary Assembly, Council of Europe, [Resolution 1691 \(2009\)](#).)

Drug screening

Legislation should establish guidelines for warranted drug screening to detect surreptitious drugging of survivors with substances known in some places as "rape drugs." Legislation should require law enforcement officers to fully inform survivors who are supplying blood or urine for drug screening that full drug screening might detect illegal substances.

Use of interpreters

Legislation should require that interpreters who have been trained to work with survivors of sexual assault, harassment, and stalking be utilized at all stages of response, investigation, and prosecution of sexual assault cases. Interpreters should be required for language interpretation and for the deaf or hard of hearing and the visually impaired.

Survivor services

- Legislation should provide for a coordinated community response for survivors of sexual assault. (See: [Coordinated Crisis Intervention](#), StopVAW, The Advocates for Human Rights.)
- Legislation should require the state to develop and fund comprehensive services for survivors. These services should include: one rape crisis centre for every 200,000 population; programs for survivors of sexual assault; survivor witness programs; elderly survivor programs; sexual assault survivor hotlines; and incest abuse programs. (See: [UN Handbook](#) 3.6.1 and 3.6.2.) The legislation should include a plan to provide survivors with this information. (See: [Minnesota, USA Statute §611A.02](#); [The Rape Victim Assistance and Protection Act \(1998\) of Philippines](#))

For example, the [Prevention and Elimination of Violence Against Women and Gender Violence \(2008\) law of San Marino](#) requires the state to provide specialized social services for victims of sexual violence that are easily accessible to victims and which employ specifically trained staff. Ch.1 Art.4

Promising practice: [Italian Law No. 38/2009 on Urgent Measures Regarding Sexual Violence](#) (2009) (Italian only) provides funding for a national 24-hour hotline to provide skilled counseling and legal assistance to victims and additional funds to support projects for victims of sexual and gender violence.

- Legislation should provide for coordinated sexual assault response teams or programs to give survivors a broad range of necessary care and services (legal, medical, and social services) and to increase the likelihood that the assault can be successfully prosecuted. Such programs or teams should include a forensic examiner, a sexual assault advocate, a prosecutor, and a law enforcement officer. All responding actors should follow specific protocols that outline their responsibilities in treating and providing services to survivors of sexual assault. (See: [Sexual Assault Response Teams](#), The Advocates for Human Rights)

Promising practice: Sexual assault nurse examiners who have advanced education in the forensic examination of sexual assault survivors are utilized in many US communities. These communities have found that victims are not re-traumatized by long waits for medical exams and insensitive gathering of forensic evidence when sexual assault nurse examiners work with victims. The use of these sexual assault nurse examiners has increased the rate of successful prosecutions, especially in non-stranger cases and child sexual assault cases, because a more thorough documentation of evidence using specialized medical tools can support a victim's account of an assault by establishing a lack of consent, and, in the case of a child, can gather evidence that will increase the number of guilty pleas so that a child doesn't have to testify. (See: [Sexual Assault Nurse Examiner Programs: Improving the Community Response to Sexual Assault Victims](#) (2001))

CASE STUDY: United Kingdom: More Rape Convictions Due to Improved Survivor Services and Police Partnership with Survivor Support Network

In Cleveland, United Kingdom, rape conviction rates were reported to have improved by 10% in 3 years. Police cited the opening of the Sexual Assault Referral Centre in 2007 as a big step forward in improving survivor care, including 24-hour access to specially-trained crisis workers, emergency contraception, sexual health advice and referral to rape counselors. The Centre's private, hospital-like environment and trained counselors support victims and police come to the centre to interview them. Evidence is collected quickly and thoroughly. The police attributed the improved conviction rates to police partnership with prosecutors, hospitals and volunteer service providers.

"In the course of any investigation we liaise closely with the [prosecutors] and counsel to ensure that prosecutions are pursued wherever possible and victims can also receive support from an independent sexual violence advisor. These specially trained advisors are employed by voluntary sector agencies to provide a high level of support to rape victims and to ensure that victims are fully aware of criminal justice procedures," said the Head of Crime for Cleveland Police.

Access to the full range of Sexual Assault Referral Centre services is assured even in cases where the victim does not wish to make a report to the police.

See: [Cleveland's Success in Rape Convictions](#), 10/06/2009.

- Legislation should mandate dedicated funding to ensure the appointment of sexual assault service providers, their registration as service providers, and to provide for their specialized training. (See: [Good practices in legislation on "harmful practices" against women](#) (2009) 3.4.2 and 3.4.3.)

Good Practice: The country of Malaysia's [one-stop centre](#), which brought together service for victims of domestic or sexual violence, was designated a "good practice" in the [Secretary-General's In-Depth Study on All Forms of Violence against Women](#) (2006). Victims are seen in private rooms, receive counseling and referrals to shelters, and access to police who have an office on premises.

CASE STUDY

The Philippines' [Rape Victim Assistance and Protection Act of 1998](#)

The Philippines' [Rape Victim Assistance and Protection Act of 1998](#) provides numerous protections for victims of sexual assault. It requires the government to coordinate its agencies with non-governmental organizations in order to establish and operate rape crisis centres in every province and city to “assist and protect rape victims in the litigation of their cases and their recovery.” (Sec.2) The law mandates the establishment of a women’s desk in every police precinct in order that a police woman is available to investigate sexual assault cases. The law also requires that the preliminary investigation of women rape victims must be assigned to female prosecutors. It provides for closed-door proceedings if necessary to ensure a fair trial and the best interests of the parties, and for the non-disclosure of identities and circumstances of cases if that also supports the best interests of the parties. (Sec. 5) Finally, the Act provides that evidence of a complainant’s past sexual conduct and reputation shall not be admitted unless, and only to the extent that, the court finds that this evidence is material to the case. (Sec. 6) The Act also mandated the formulation of necessary regulations within 90 days, and appropriated funds to establish and maintain the centres, with the important stipulation that the necessary amount to maintain the centres be included annually in the General Appropriations Act. (Sec. 7)

- Legislation should provide that survivor services are not conditional upon filing a report with the police, or upon the survivor’s decision to testify or to work with prosecution regarding the case. (See: [Gender-Based Violence Laws in Sub-Saharan Africa](#), p. 44)
 - Legislation should require that law enforcement, prosecutors, and judicial personnel, medical sexual assault response teams, and social service professionals who serve victims of sexual assault receive regular training on best practices and updated techniques in investigation, handling and prosecution of sexual assault cases and in the support and advocacy of sexual assault survivors. Legislation should require state funding of such training.
- See: National Prosecuting Authority of South Africa, *Uniform Protocol for the Management of Victims, Survivors, and Witnesses of Domestic Violence and Sexual Offences*, a resource for service providers, traditional leaders, and others. The protocol includes a description of the domestic violence and sexual offence context in South Africa, its objectives, and a comprehensive set of minimum standards in service delivery, monitoring of services, and governance of service delivery. Available in [English](#).

Promising practice: The [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No.32\) of South Africa](#) requires that national directorates on police, prosecutors and health must develop training courses for these professionals and include social context in the trainings, develop protocols, and provide for and promote the use of uniform norms, standards and procedures to ensure that as many as possible are “able to deal with sexual offence cases in an appropriate, efficient and sensitive manner.” (Ch. 7, Part 4.)

See section on [Implementation of Laws](#) in this Module.

- Legislation should state that no legal or other proceedings may be brought against sexual assault service providers who are acting in good faith to assist and protect complainant/survivors of sexual assault. (See: [Good practices in legislation on “harmful practices” against women](#) (2010), 3.4.3.)

Other legal issues in sexual assault cases

Implementation of laws

- Legislation should include all necessary provisions for full implementation of the laws on sexual assault, including development of protocols, regulations, and standardized forms necessary to enforce the law. Legislation should require that these protocols, regulations and forms be developed within a limited number of months after the law is in force, and legislation should provide a fixed time that may pass between the adoption of a law on sexual assault and the date that it comes into force. See: [UN Handbook](#), 3.2.6 and 3.2.7.
- Legislation should require full and sustained funding necessary for implementation of the law. Legislation should provide for a specific institution to monitor the implementation of the laws on sexual assault, and for the regular collection of data on sexual assaults. (See: [UN Handbook](#), 3.3.1 and 3.3.2)

The [Sexual Offences Act \(2006\) of Kenya](#) includes the following provision:

“The Minister shall (a) prepare a national policy framework to guide the implementation, and administration of this Act in order to secure acceptable and uniform treatment of all sexual related offences including treatment and care of victims of sexual offences; (b) review the policy framework at least once every five years; and (c) when required, amend the policy framework. Section 46

For detailed provisions on implementation, see the section on [Funding Implementation](#) in [Implementation of Laws](#) on violence against women and girls of this Module.

Prevention of sexual assault

- Legislation should include detailed provisions for prevention of sexual assault, including public education on the human rights of women and girls and public awareness of laws and penalties.

For detailed examples of country sexual assault prevention campaigns, see the examples [Campaigns](#) on Sexual Assault in the Public Awareness and Education in [Implementation of Laws](#) section of this Module.

- Legislation should require full funding necessary to implement provisions on prevention of sexual assault.

Penalties for non-compliance

Legislation should provide for effective sanctions against all authorities who do not comply with the provisions. (See: [UN Handbook](#), 3.2.8)

Extraterritorial jurisdiction

- Legislation should provide that persons who commit a sexual assault outside of the state are subject to the jurisdiction of the courts of the state if they are a citizen or resident of the state or if the sexual assault was committed against a citizen or resident of the state.
 - Legislation should ensure full accountability for the military troops of a state, wherever their location, and full accountability for United Nations peacekeeping forces. (See: [Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), 25 (e).)
 - UN peacekeeping forces have been implicated in charges of sexual assault, abuse, and exploitation for years, often with impunity. UN officials and the home countries of perpetrators must work together to provide accountability for these offenders. (See: [UN News Centre, "UN peacekeepers involved in abuse are being punished, world body says."](#) (5 November 2009.))
 - The UN has recently issued a code of conduct for police operating under the UN flag.
- See: *United Nations Criminal Justice Standards for United Nations Police* (2009); available in [English](#).

Civil lawsuits

- Legislation should allow civil lawsuits against perpetrators. Any requirements that do not allow women to bring civil lawsuits against a husband or family member who is a perpetrator, or that require the consent of a husband or family member in order to bring a civil lawsuit, should be abolished. (See: [UN Handbook](#) 3.12.2)
- Legislation should allow survivor/complainants and the families of deceased victims to bring civil lawsuits against governmental or non-governmental parties for not exercising due diligence to prevent, investigate or punish sexual violence. Legislation should allow survivor/complainants and the families of deceased victims to bring civil lawsuits on the basis of anti-discrimination laws, human rights provisions, or civil rights laws. (See: [UN Handbook](#). 3.12.2)

CASE STUDY:
**Inter-American Court of Human Rights Rebukes Government of Mexico for
Inaction in Femicide Cases**

In [Caso González y Otras \(“Campo Algodonero”\) v. Mexico](#) (Spanish only), released in December, 2009, the [Inter-American Court of Human Rights](#) (IACHR) found that the Mexican government did not uphold the human rights of its citizens under the [American Convention of Human Rights](#) and the [Convention of Belém do Pará](#) by failing to investigate the deaths of three women in Ciudad Juarez, which has been the site of massive, and unsolved, sexual violence and femicide since 1993. This represents the first time that an international tribunal has rebuked Mexico for its inaction in the deaths of hundreds of women in Ciudad Juarez. The IACHR ruled that Mexico has the obligation to legislate and act with due diligence to prevent, investigate and sanction violence against women. It stated that Mexico violated the human rights of the families of the victims by failing to guarantee their access to justice.

The IACHR ruled that the Mexican government must implement a number of remedies, including paying more than \$200,000 to each of the families of the three women, taking steps to find the perpetrators of the femicide, and creating a monument in commemoration of hundreds of murder victims.

Estimates of the number of women killed since the femicide began in 1993 range from 350 to nearly 1000. Most of the victims are young women who work in maquiladoras, factories on the border of the U.S. The majority were lived in or near Ciudad Juarez and came from middle- and working-class households.

Activist groups in Ciudad Juarez have long called for an end to impunity for the killings. Despite the creation of a forensics laboratory, verbal agreements to solve the cases, and the naming of a special prosecutor to handle the femicide, few of the murder cases have been solved, and 18 women went missing in 2009 alone.

(See: [“Court cites rights failure by Mexico in Juarez killings of women” The Los Angeles Times](#); (11 December 2009); and [“Mexico: Rebuke on Investigation of Murders” The New York Times](#) (10 December 2009), and De Cicco, [“Mexico-Ciudad Juarez - Disappearances & Murders of Mexican Women Finally Steps Towards Justice - Inter-American Human Rights Court Judgment,”](#) 12 December 2009.)

Insurance discrimination

Legislation should prohibit the denial or cancellation of insurance policies for crisis centres, shelters, safe houses and counseling centres or other agencies that provide assistance to victims based upon the class of clients they serve. Legislation should prohibit insurance discrimination against victims of sexual assault and stalking in relation to health, disability, life, and property insurance.

- See: *The Toolkit to End Violence Against Women*, Ch. 3; available in [English](#).

Asylum law

Legislation should provide that sexual assault against a vulnerable woman may constitute persecution for purposes of asylum law. Legislation should provide that survivors of such violence should constitute a “particular social group” for the purposes of asylum law. (See: [UN Handbook](#) 3.14)

Independent and favorable immigration status for survivors of sexual assault

Legislation should provide that survivors of sexual assault should not be deported or subjected to other punitive actions related to their immigration status when they report such violence to the authorities. Legislation should allow immigrants who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator. (See: [UN Handbook](#) 3.7.1)

Resources

- Canadian HIV/AIDS Legal Network, ***Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS*** (2009). Available in [English](#).
- Council of Europe ***General Recommendation (2002)5 of the Committee of Ministers to member States on the protection of women against violence adopted on 30 April 2002 and Explanatory Memorandum***. Available in [English](#).
- Horváth, Enikő, Zukani, Monwabisi, Eppel, Desmond, Kays, Monica, Konare, Abdoul, Park, Yeora S., Pischalnikova, Ekaterina Y., Stankard, Nathaniel, and Zingher, Tally, in collaboration with Barad, Elizabeth and Slattery, Elisa, ***Gender-Based Violence Laws in Sub-Saharan Africa*** (2007), prepared for the Committee on African Affairs of the New York City Bar as part of a pro bono project coordinated by The Cyrus R. Vance Centre for International Justice. Available in [English](#).
- International Centre for Criminal Law Reform and Criminal Justice Policy (Canada), ***Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice: Resource Manual***, (1999). Available in [English](#).
- National Advisory Council on Violence Against Women (2001) United States, ***The Toolkit to End Violence Against Women***. Available in [English](#).
- Organization of American States, ***Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women***, 1994; available in [English](#) and [Spanish](#).
- The Advocates for Human Rights, ***StopVAW***, available in [English](#), retrieved 2010.
- The ***UN Secretary-General's database on violence against women*** is an excellent source for laws, action plans, administrative provisions, and much more from many countries. Available in [English](#).
- United Nations Commission on Crime Prevention and Criminal Justice, ***Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice***, March 2009. Available in [English](#).
- United Nations Department of Economic and Social Affairs and Division for the Advancement of Women ***United Nations Handbook for legislation on violence against women***. Available in [Arabic](#); [English](#); [French](#); [Mandarin](#); [Spanish](#); and [Russian](#).
 - A PowerPoint presentation on this United Nations model framework is available [here](#).
 - A video dialogue between two experts discussing the model framework is available [here](#).
- United Nations Division for the Advancement of Women and United Nations Economic Commission for Africa, ***Good practices in legislation on "harmful practices" against women***, (2010). Available in [English](#).

Sexual Harassment

Throughout this knowledge asset, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a good example or a promising practice. Some of the laws cited herein may contain provisions which authorize the death penalty. In light of United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

Overview

General principles for sexual harassment laws

Anti-discrimination/equal opportunity laws

Sexual harassment in employment

Sexual harassment in education

Sexual harassment in sport

Sexual harassment in housing

Sexual harassment in provision of goods, benefits, and services

Criminal law

Resources

Overview

- A law that defines and provides remedies for sexual harassment is a critical element of protecting the rights of women and girls. When there is no legal provision related to sexual harassment, denial about the problem can be pervasive and women have little redress. In Chile, for example, the Department of Labor received only 61 complaints of sexual harassment in the year before Chile's law was passed. Following passage of the sexual harassment law, the same office received more than 1900 complaints in a year. (See: Daniela Estrada, [Sexual Harassment Law Finally Approved After 13 Years](#), 2005)
- In its [Handbook for legislation on violence against women](#), the United Nations Division for the Advancement of Women has identified several key areas that laws related to sexual harassment should address. In section 3.4 the UN Handbook specifies that legislation should:
 - Criminalize sexual harassment;
 - Recognize sexual harassment as a form of discrimination;
 - Recognize sexual harassment as a violation of women's rights with health and safety consequences;
 - Recognize that harassment occurs in both vertical (such as between teacher and student or between manager and employee) and horizontal power relationships (such as between employees at the same level);
 - Provide effective criminal, civil, and administrative remedies for victims;
 - Address harassment in multiple sectors including public places, employment (formal and informal sectors), education, housing, commercial transactions, provision of benefits and services, and sporting activities.

Definition of terms used in this chapter

Harassment. To create an unpleasant or hostile environment, especially through uninvited physical or verbal conduct.

Sexual behavior. This means actions, language or visual materials which specifically refer to, portray or involve sexual activity or language. Conduct of a sexual nature may include overt sexual solicitations, inappropriate touching, sexual jokes and inquiries about a person's sex life.

Sex-based behavior. Sex-based behavior occurs because of the sex of the intended victim but is not necessarily sexual in nature. Examples of this kind of behavior are disparaging comments on the role of women, or discriminatory treatment aimed only at women.

Assault. Infliction of offensive physical contact or bodily harm or the threat or attempt to inflict such conduct or harm. See the [Sexual Assault](#) Section of this module.

Peer-to-peer harassment. Harassing behavior between individuals considered to be equals in the context in which the harassment takes place, such as a student harassing a fellow student, athlete harassing a fellow team member, employee harassing another employee at the same level.

Quid pro quo harassment. Also referred to as abuse of authority, occurs when (1) job benefits, including employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment, are made contingent on the provision of sexual favors, usually to an employer, supervisor or agent of the employer who has the authority to make decisions about employment actions, or (2) the rejection of a sexual advance or request for sexual favors results in a tangible employment detriment.

Hostile-environment harassment. Harassment that does not result in a tangible employment-related action such as displaying pornography, touching and grabbing, and sexual or sex-based remarks or jokes.

Sources of international law related to sexual harassment

The United Nations and regional treaty systems have recognized sexual harassment as a form of discrimination and violence against women. International statements of law and principle provide an important starting point in drafting legislation that prohibits sexual harassment.

United Nations

[General Assembly Resolution 48/104](#) on the Declaration on the Elimination of Violence Against Women defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere (Art. 2(b)), and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women (Art. 4(d-f)). The [Convention on the Elimination of all Forms of Discrimination against Women](#) (CEDAW) directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life. (Arts. 7-16). Moreover, the [Beijing Platform for Action](#), para. 178, recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.

International Labour Organization (ILO)

The ILO Committee of Experts on the Application of Conventions and Recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the [Discrimination \(Employment and Occupation\) Convention \(No. 111\)](#) of 1958. The ILO's [Indigenous and Tribal Peoples Convention \(No. 169\)](#) also specifically prohibits sexual harassment in the workplace.

African Union & Subregional Bodies

- The [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) obligates State Parties to take appropriate measures to:
 - Eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
 - Protect women from all forms of abuse (including sexual harassment);
 - Ensure transparency in recruitment, promotion and dismissal of women, and combat and punish sexual harassment in education and the workplace.

(See: Articles 12-13.)

- Sub-regional bodies in Africa also have addressed sexual harassment. For example, the [Southern African Development Community Protocol on Gender and Development](#), in Article 22, requires that states parties by 2015 must:

enact legislative provisions, and adopt and implement policies, strategies, and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment.

The protocol has been signed by Angola, Democratic Republic of Congo, Lesotho, Madagascar, Mauritania, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The [Economic Community of West African States](#), which includes Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo, also is in the process of developing regional policy on sexual harassment in the workplace and in educational institutions. (See: [Office of the Commissioner on Human Development and Gender](#))

Europe

The [Charter of Fundamental Rights of the European Union](#) specifically enshrines the right to be free from discrimination on the basis of sex, and Article 23 obligates states to ensure equality between men and women in all areas. This principle has been further elaborated through several directives dealing with sexual harassment, including [Directive 2006/54/EC](#) related to equal opportunities in employment and the [Directive 2004/113/EC](#) related to equal treatment in access to goods and services. These directives require member states to incorporate into national law the following principles:

- The Charter of Fundamental Rights of the European Union prohibits discrimination on the grounds of sex and enshrines the right to equal treatment between men and women in all areas, including employment, work and pay, vocational training, and access to goods and services;
- Clarify that sexual harassment constitutes discrimination on the grounds of sex;
- Prohibition, at a minimum, of behavior meeting the Directives' definition of sexual harassment in the workplace and in the provision of goods and services;
- Encourage employers to take measures to combat all forms of sexual discrimination and prevent harassment in the workplace.

See: European Commission, [Transposition of Gender Equality directives into national law](#).

Organization of American States

The Organization of American States treats sexual harassment as an issue of violence against women, instead of a discrimination issue. Accordingly, the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#) (Belem do Para) affirms the right of women to be free from violence, including sexual harassment in employment or any other context, and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence. Article 2 states that sexual harassment in the workplace, educational setting, health facilities, or any other place constitutes violence against women.

Placement of Sexual Harassment Laws in National Legislation

- Although often associated with the workplace, sexual harassment can occur in many contexts. Accordingly, drafters should review a broad spectrum of national legislation to determine where provisions on sexual harassment may need to be included. Around the world, sexual harassment provisions are found in criminal codes, labor codes, health and safety legislation, anti-discrimination and equal opportunity laws, as well as education and licensing statutes, to name a few. For example, in Panama, sexual harassment is addressed in the labor code, the penal code, and in a law specifically prohibiting sexual harassment in public employment. (See: [Act No. 9 of 20 June 1994](#); [Act. No. 44 of 1995](#); [Law No. 38 of 2001](#); [Approaches to and Remedies under Sexual Harassment Law – Civil Law](#), StopVAW, The Advocates for Human Rights.)
- In some countries, sexual harassment is addressed through laws related to assault or defamation. This approach is not ideal, however, as it does not recognize the specific gendered aspects of sexual harassment, it does not recognize harassment as a form of discrimination, and it does not provide for specifically tailored remedies. A preferable approach ensures that sexual harassment is included as a specific form of prohibited discrimination in broad-based anti-discrimination legislation. In many national contexts, a code-specific approach is also used, e.g., prohibiting discrimination through the labor code, health and safety legislation, licensing statutes, etc.

CASE STUDY – Pakistan (See also [Pakistan Case Study](#) in the Advocacy Section)

In Pakistan, two different laws were proposed to ensure that women in all work environments are fully protected. As in many emerging economies, women in Pakistan work both in the formal and informal sectors, and women's rights organizations realized that different legislative approaches were needed to ensure protection for women in different sectors of the economy. A new civil law has changed the way that claims of sexual harassment are handled in the formal employment sector. The law makes mandatory the implementation of policies that have been voluntarily adopted by many employers in Pakistan, called [The Code of Conduct for Gender Justice at the Workplace](#). The law requires that employers in Pakistan incorporate the Code of Conduct into their workplace policies and establish Inquiry Committees to investigate claims of sexual harassment. A law to amend Pakistan's Penal Code and Code of Criminal Procedure also expanded the definition of sexual harassment to cover the workplace and increased the penalties for perpetrators. The criminal code amendment was the result of ongoing consultation with women working in the informal sector, such as agriculture and markets, who voiced concern that measures proposed to establish workplace grievance committees, for example, might not work effectively to protect them outside the formal workplace. The new criminal law in Pakistan allows for a term of imprisonment of up to three years and a fine of up to 500,000 rupees, or both. See: [Criminal Law \(Amendment\) Act, 2009](#); Nosheen Abbas, [Sexual Harassment in Pakistan](#) (Dec. 16, 2009); [Protection Against Harassment at the Workplace Act](#).

General principles for sexual harassment laws

Core elements of sexual harassment laws

Sexual harassment can occur in multiple contexts and legislation should comprehensively address each of these in order to fully protect the rights of women and girls. This module includes specific information about harassment in employment, education, sports, housing, and provision of goods and services. In any context, however, laws prohibiting sexual harassment should include the following general components:

- A statement of purpose, also known as a preamble, that references international, regional, and existing national protections against discrimination and violence against women;
- A broad definition that includes examples of prohibited behavior;
- Judicial and/or administrative procedures to enforce the prohibition on harassment, including confidential complaint procedures;
- Provision for effective, proportionate compensation and/or reparation related to damages and losses suffered as a result of the harassment;
- Dissuasive penalties for perpetrators;
- Placing the burden of proof in civil proceedings on the alleged perpetrator, once a prima facie case is made;
- Protections against retaliation;
- Guidance for interpretation of the law;
- Measures for prevention such as policy development, including confidential complaint procedures, and training;
- Designated oversight body with the power to enforce the law, provide assistance to victims, collect data, and publish appropriate reports.

Statement of Purpose

- A statement of purpose, also known as a legislative preamble, statement of objects, or statement of aims, sets the stage for the entire piece of legislation. The following elements are important to a strong and inclusive statement of purpose:
 - A clear statement of the purpose of the legislation as grounded in women's right to be free from gender-based violence and discrimination (Reference to [international and regional principles](#) of non-discrimination can assist in stating the purpose and in providing language to help with later interpretation of the law);
 - Description of the negative impact of sexual harassment on women's safety, health, economic security, and equal status in society;
Recognition of the negative impact of sexual harassment on society, including

decreases in productivity, loss of diversity, increased costs of sick time and other leave, and legal bills, for example; and

- Recognition that sexual harassment has a disproportionate impact on vulnerable groups such as younger women, migrants, minorities, the poor, those with precarious legal status, and other marginalized communities.

The following are examples of the ways that countries have drafted their statements of purpose relative to sexual harassment legislation.

- Australia's law sets out the objectives of the legislation and refers specifically to international human rights principles and obligations:

The objects of this Act are:

(a) to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women; and

(b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status, pregnancy or potential pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs; and

(ba) to eliminate, so far as possible, discrimination involving dismissal of employees on the ground of family responsibilities; and

(c) to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace, in educational institutions and in other areas of public activity; and

(d) to promote recognition and acceptance within the community of the principle of the equality of men and women.

See: [Sex Discrimination Act](#), sec. 3.

- Costa Rica's 1995 Act No. 7476 on Sexual Harassment in the Workplace and in Education also specifically references CEDAW in article 1 stating that the Act:

is based on the constitutional principles of respect for freedom and human life, the right to work, and the principle of equality before the law, which oblige the State to condemn gender-based discrimination and to establish policies to eliminate discrimination against women, in accordance with the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

(See: Committee on the Elimination of Discrimination Against Women, [Combined initial, second and third periodic reports of States parties – Costa Rica, CEDAW/C/CRI/1-3](#), para. 96.)

- Iceland's equality act specifies the broad purpose of the legislation as increasing equality through action-oriented goals:

The aim of this Act is to establish and maintain equal status and equal opportunities for women and men, and thus promote gender equality in all spheres of the society. All individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender. This aim shall be reached by:

- a. gender mainstreaming in all spheres of the society,*
- b. working on the equal influence of women and men in decision-making and policy-making in the society,*
- c. enabling both women and men to reconcile their occupational and family obligations,*
- d. improving especially the status of women and increasing their opportunities in the society,*
- e. increasing education in matters of equality,*
- f. analysing statistics according to sex,*
- g. increasing research in gender studies.*

See: [Act on the Equal Status and Equal Rights of Women and Men](#), Art. 1.

- The statement of purpose in The Philippines legislation highlights sexual harassment as an issue of human rights and individual dignity:

The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful.

See: [Republic Act No. 7877](#), sec. 2.

Guidance on interpreting the law

- Sexual harassment legislation should include a directive for liberal interpretation by courts to effectuate the purpose of the legislation. Drafters may also wish to include a severability clause to ensure that if any part of the legislation is found to be invalid or inapplicable, all other aspects of the legislation should remain in effect.

South African law, for example, provides guidance relative to legal interpretation and management of cases brought under its equality legislation:

Interpretation of Act

3. (1) *Any person applying this Act must interpret its provisions to give effect to--*

(a) the Constitution, the provisions of which include the promotion of equality through legislative and other measures designed to protect or advance persons disadvantaged by past and present unfair discrimination;

(b) the Preamble, the objects and guiding principles of this Act, thereby fulfilling the spirit, purport and objects of this Act.

(2) *Any person interpreting this Act may be mindful of--*

(a) any relevant law or code of practice in terms of a law;

(b) international law, particularly the international agreements referred to in section 2 and customary international law;

(c) comparable foreign law.

(3) *Any person applying or interpreting this Act must take into account the context of the dispute and the purpose of this Act.*

Guiding principles

4. (1) *In the adjudication of any proceedings which are instituted in terms of or under this Act, the following principles should apply:*

(a) The expeditious and informal processing of cases, which facilitate participation by the parties to the proceedings;

(b) access to justice to all persons in relevant judicial and other dispute resolution forums;

(c) the use of rules of procedure in terms of section 19 and criteria to facilitate participation;

(d) the use of corrective or restorative measures in conjunction with measures of a deterrent nature;

(e) the development of special skills and capacity for persons applying this Act in order to ensure effective implementation and administration thereof.

(2) *In the application of this Act the following should be recognised and taken into account:*

(a) The existence of systemic discrimination and inequalities, particularly in respect of race, gender and disability in all spheres of life as a result of past and present unfair discrimination, brought about by colonialism, the apartheid system and patriarchy; and

(b) the need to take measures at all levels to eliminate such discrimination and inequalities.

(See: [Promotion of Equality and Prevention of Unfair Discrimination Act](#), Ch. 1)

Definition

- Legal definitions of sexual harassment should:
 - Prohibit conduct that is offensive by its very nature;
 - Prohibit subjectively unwelcome conduct subject to a reasonableness standard;
 - Recognize that harassment may be sexual or sex-based behavior;
 - Recognize that harassment can occur in peer-to-peer relationships as well as in relationships where one party is in a position of authority over the other;
 - Provide examples of conduct that constitutes sexual harassment, including physical conduct and advances, a demand or request for sexual favors, sexually colored remarks, displaying sexually explicit pictures, posters or graffiti, and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature;
 - Make clear that a single incident may constitute sexual harassment.

(See: [UN Handbook for legislation on violence against women](#), sec. 3.4.3.2, 2009; International Labour Organisation, [Sexual Harassment at Work: national and international responses](#), 3, 2005.)

- A clear, broad, and detailed definition of sexual harassment is the central component of effective legislation. When legislation on sexual harassment prohibits the practice but does not define it, ambiguity and uncertainty in enforcement can become a problem.
- Legal definitions of sexual harassment often draw on definitions developed in the context of workplace sexual harassment in the United States. U.S. law defines two common types of sexual harassment, *quid pro quo* harassment and hostile environment harassment.
 - *Quid pro quo harassment*: also referred to as abuse of authority, occurs when (1) job benefits, including employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment, are made contingent on the provision of sexual favors, usually to an employer, supervisor or agent of the employer who has the authority to make decisions about employment actions, or (2) the rejection of a sexual advance or request for sexual favors results in a tangible employment detriment.
 - *Hostile-environment harassment*: harassment that does not result in a tangible employment-related action such as displaying pornography, touching and grabbing, and sexual or sex-based remarks or jokes.
- Legal definitions of sexual harassment should prohibit conduct that is offensive by its very nature, such as physical molestation or sexual blackmail. For example, Israeli sexual harassment law prohibits several types of offensive conduct, including:
blackmail by way of threats, as defined in section 428 of the Penal Law, where the act demanded to be performed by the person is of a sexual character...[and] indecent acts, as defined in sections 348 and 349 of the Penal Law;
(See: [Prevention of Sexual Harassment Law](#), sec.3(a)(1-2))

- Legal definitions of sexual harassment should provide examples of conduct that constitutes sexual harassment.

The International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, for example, defined sexual harassment as any:

insult or inappropriate remark, joke, insinuation and comment on a person's dress, physique, age, family situation, etc; a condescending or paternalistic attitude with sexual implications undermining dignity; any unwelcome invitation or request, implicit or explicit, whether or not accompanied by threats; any lascivious look or other gesture associated with sexuality; and any unnecessary physical contact such as touching, caresses, pinching or assault.

(See: [Sexual Harassment at work: National and international responses](#), 13, 2005)

- Legal definitions should make clear that a single incident may constitute sexual harassment.

For example, the U.S. state of Minnesota's Harassment Restraining Order law, makes clear that a single incident can constitute harassment:

The law defines harassment as:

(1) a single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;

(See: [Minn. Stat. sec. 609.748](#), subd. 1.)

Mauritius' law, although more general, also would prohibit a single incident of harassment:

(1) A person sexually harasses another person where, in circumstances in which a reasonable person would have foreseen that the other person would be humiliated, offended or intimidated, he –

(a) makes an unwelcome sexual advance, or an unwelcome request for a sexual favour, to another person; or

(b) engages in any other unwelcome conduct of a sexual nature towards another person.

(2) For the purposes of subsection (1)(b), "conduct" includes making or issuing an unwelcome oral or written statement of a sexual nature to a person or in the presence of a person.

(See: [Equal Opportunities Bill](#) Art. 25.)

- Even when this principle is not clearly delineated in law, courts generally find that certain conduct is so severe or offensive that it need happen only once in order to be considered sexual harassment. In a 1995 case in the UK, [Insitu Cleaning Co. Ltd. V. Heads](#), the court affirmed a lower tribunal's judgment that a younger male employer's single statement to an older female employee about her breasts, made in the presence of other employees, was sufficient to constitute sexual harassment and to merit an award of damages.
- Legal definitions of sexual harassment should prohibit subjectively unwelcome conduct subject to a reasonableness standard, so as to "permit consensual sexual behavior while prohibiting mistreatment." See [Sexual Harassment at Work: National and international responses](#), 3, 2005. (Note that drafters will need to reconsider "unwelcomeness" in the context of [school/sporting](#) sex harassment).

Unwelcomeness

Laws should require that conduct be subjectively unwelcome for it to constitute harassment. Some legislation requires that a complainant clearly express that conduct is unwelcome for it to be considered sexual harassment.

- In Iceland, for example "sexual harassment constitutes sexual behaviour that is unreasonable and/or insulting and against the will of those who are subjected to it, and which affects their self-esteem and is continued in spite of a clear indication that this behaviour is unwelcome." (See: [Act on the Equal Status and Equal Rights of Women and Men](#), Art. 17)
- In Israel, the law states that sexual harassment constitutes "propositions of a sexual character to a person, where that person has shown to the harasser that he is not interested in the said propositions" or "references directed towards a person, which focus on his sexuality, where that person has shown to the harasser that he is not interested in the said references." (See: [Prevention of Sexual Harassment Law](#), sec.3(a)3-4) Israel's law also states that in some cases of particularly vulnerable victims, certain conduct constitutes harassment whether or not the victim expresses that it is unwelcome.

Reasonableness

In general, legislation prohibiting sexual harassment includes provisions indicating that the conduct must be objectively unreasonable for it to constitute harassment. If this requirement is not found in legislation, it will often be imposed by courts when they examine the facts of a case.

Malta's law provides a typical example, stating that it is prohibited:

to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed. See: [Equality for Men and Women Act](#) , sec. 9(1)(c).

Burden of proof

Laws should specify that once a complainant has brought forth facts from which it can be presumed that there has been sexual harassment, the burden shifts to the other party to prove that there was a legitimate, or non-discriminatory reason for the action. Drafters should be aware of the fact that burdens of proof in sexual harassment cases can provide a significant disincentive for victims to come forward with claims, when not drafted to include burden-shifting provisions. Burden-shifting provisions also provide an incentive for prevention of potentially discriminatory behavior in the first instance.

- Bulgaria's [Bill on Prevention of Discrimination](#) in article 14 states:

In discrimination proceedings, after the party contending to be a victim of discrimination establishes facts from which it may be presumed that there has been discrimination, the accused party must prove that there has been no breach of the right of equal treatment.

- Guyana's [Prevention of Discrimination Act](#) states in Part IX, para. 23 that:

Except where otherwise provided in this Act, the person alleging a violation of this Act shall bear the burden of presenting a prima facie case of discrimination or of an offence related to discrimination under this Act, whereupon the burden of proof shall shift to the respondent to disprove the allegations.

- South Africa's [Promotion of Equality and Prevention of Unfair Discrimination Act](#) includes a similar provision in Ch. 13, para. 13:

If the complainant makes out a prima facie case of discrimination--(a) the respondent must prove, on the facts before the court, that the discrimination did not take place as alleged; or(b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds.

Proof of injury

Legislation should not require that victims demonstrate proof of psychological or physical injury in order to claim damages for harassment. The focus of legislation should be on the conduct of the harasser and whether the conduct was unwelcome and unreasonable. The United States, among other countries, has determined through judicial opinions that proof of psychological or physical injuries is not necessary to recover damages from an employer under civil sexual harassment law. See: [Harris v. Forklift Systems](#), 510 U.S. 17 (1993); [Barriers to Effective Enforcement of Sexual Harassment Law](#), StopVAW, The Advocates for Human Rights.

Retaliation

- Legislation should prohibit retaliation against any individual who reports harassing behaviors, who brings a complaint or legal claim alleging sexual harassment, or who cooperates with an investigation into sexual harassment.
- Benin's legislation on sexual harassment provides that no victim of sexual harassment can be sanctioned or fired for having suffered or refused to undergo acts of harassment, and also specifically prohibits retaliation against students in schools. (See: [Proposition de loi sur le harcèlement sexuel](#), Arts. 4-6) Chinese law also provides an example of an anti-retaliation provision, stating that:

Anyone who retaliates against a person making a complaint, a charge or an exposure regarding an infringement upon a women's rights and interests shall be ordered to make corrections or be subjected to administrative sanctions by his or her unit or an organ at a higher level. If a State functionary commits retaliation, which constitutes a crime, the offender shall be investigated for criminal responsibility...

(See also: [Law of the People's Republic of China on the Protection of Rights and Interests of Women](#), Ch. 8 Art. 50.)

Remedies

- Remedy provisions in sexual harassment laws should reflect a policy of returning victims to the position they were in prior the harassment and should provide for dissuasive penalties.
- Remedies for sexual harassment vary extensively depending on the facts of cases and on the type of laws or policies under which complaints are brought. Given this variety of approaches, remedies may range from reinstatement of a worker who was dismissed, to recovery of back pay and leave time, to policy changes in education or housing settings, to changes in working conditions, to awards of compensatory and punitive damages. Some perpetrators are also subject to criminal penalties. (See [Criminal law section](#))
- For example, Philippine legislation provides that victims of harassment in the workplace or in educational and training institutions can access civil, administrative, and criminal remedies. (See: [Republic Act No. 7877](#), sec. 4-5) Moreover, victims in the Philippines can pursue civil cases against both employers and the individual perpetrator. Benin's law is one of the few that lists specific remedies available to judges in cases in which a child is sexually harassed. (See [Benin case study](#)) Benin's law also makes accomplices in sexual harassment cases liable for the same punishment as perpetrators. (See: [Loi sur le Harcelement Sexuel](#)) In the United States, victims of workplace sexual harassment are required to file claims with the federal Equal Employment Opportunities Commission, or with a state-level equivalent, before they can file a private suit against an employer. (See: EEOC, [Filing a Charge of Discrimination](#)) Victims of [sexual harassment in housing](#) in the United States can bring claims to their local police, state and federal housing authorities, or can file a civil claim in court.

PROMISING PRACTICE – Minnesota’s Harassment Restraining Order Law

Some criminal laws not only punish perpetrators but also provide special protective remedies for victims of harassment. In the U.S. state of Minnesota, for example, anyone who is being harassed can apply for a Harassment Restraining Order. See: [Harassment Restraining Order](#), Women’s Law.org. The law applies to harassment in any context, no matter what the relationship of the victim to the perpetrator. A temporary restraining order can be issued even without the harasser present in court, “if the court finds reasonable grounds to believe that the respondent has engaged in harassment.” See: [Minn. Stat. sec. 609.748](#), subd. 4. A perpetrator who violates a restraining order is subject to criminal penalties. (See: [Minn. Stat. sec. 609.748](#), subd. 6. See also [Sexual Assault/Domestic Violence](#) Sections)

Policy development & training

- Laws on sexual harassment, whether criminal or civil, should require prevention, policy development, and training of those covered by and charged with implementing the law. These issues are addressed in detail in the context-specific sections included in this sub-section.
- Laws should require that anti-sexual harassment policies be put in place across sectors. Laws should mandate the creation of organizational policies that include internal complaint mechanisms to allow victims to raise claims of sexual harassment without having to file a formal civil or criminal complaint. Victims of harassment are much more likely to raise concerns in an informal complaint process. Policies should require that immediate action be taken with respect to sexual harassment claims. This involves documenting the complaint, taking measures to stop any alleged harassment, beginning an investigation, and providing support for the victim.
- Anti-sexual harassment training of public sector and private sector employees should be required, so as to aid in prevention of sexual harassment not only in the workplace, but in the educational, housing, sporting, and service provision contexts.

Education & Awareness-Raising

- Laws on sexual harassment should allocate resources for [education and raising awareness](#) of the problem. This might be done through specific budgetary allocation for government-run programs or through allocations of funds to NGOs to develop awareness-raising and educational programs. Many nations have undertaken such efforts by, for example:
- Including sexual harassment as a topic in nationwide campaigns on violence against women;
- Creating lessons and programs on sexual harassment to be included in school curricula; and

- Developing media campaigns to promote gender equality and to inform women of their rights when they have been sexually harassed.

(See: [Campaign for Eliminating Violence Against Women](#) (Japan); [Module in Social Education and Equality Issues](#) (Ireland); [Radio Campaigns to Prevent Sexual Harassment](#) (Costa Rica); [Korean Institute for Gender Equality Promotion and Education Trainings](#) (Korea); [Inclusion of Violence Against Women in Curricula on Ethical Education and Civics](#) (Slovakia))

PROMISING PRACTICE - Raising Awareness in Slovenia & Croatia

In 1997 in Slovenia and Croatia a coalition of trade unions, women’s groups, and universities instituted massive campaigns to raise awareness about workplace sexual harassment. The campaigns focused on changing attitudes in the workplace and educating women about their legal rights to a workplace free from sexual harassment. Advocates distributed thousands of leaflets and posters providing guidelines for employees facing sexual harassment in the workplace and instructing women “How to say no to your boss.” The posters and leaflets appeared in banks, post offices, railway stations, health care centers, parliament, and government agencies. In addition, a manual on developing employer policies for the prevention and eradication of sexual harassment and video tapes introducing the problem of sexual harassment in the workplace were also distributed at “the training of trainers” workshops. The campaign resulted in 95 articles in the print media, seven television broadcasts, and extensive radio coverage in Slovenia along with 50 articles and four television programs in Croatia. In addition, the campaign generated the following impacts:

- Government agencies and trade unions established phone lines dedicated to providing counseling regarding sexual harassment;
- A strike forced a major Slovenian company to address sexual harassment charges by its female employees;
- A new labor law prohibiting sexual harassment was drafted in Slovenia;
- The first criminal charges of sexual harassment were filed in Croatia;
- Croatian trade unions adopted sexual harassment policies;
- The campaign promoted increased awareness about sexual harassment in the workplace.

(See: *Picturing a Life Free of Violence: Media and Communications Strategies to End Violence Against Women*, [Chapter 2: Sexual Assault And Coercion, Saying No to Sexual Harassment in the Workplace](#), 28)

Oversight & monitoring

Laws on sexual harassment should provide for the establishment of an [oversight and monitoring body](#). This government body should have the power to receive complaints from victims, assist victims with gaining redress, gather data on the problem of sexual harassment, and make recommendations for reform when necessary. For example, new sexual harassment legislation in Pakistan establishes the position of an Ombudsman for each of Pakistan's regions, under the National Commission on the Status of Women, who has the power to receive and address claims of sexual harassment. (See: [Protection Against Harassment at the Workplace Act; Farahnaz Ispahani, Towards Women's Empowerment, new Pakistan, \(March 13, 2010\)](#))

Anti-discrimination/equal opportunity laws

Broad based anti-discrimination laws focus on protecting individuals based on a specific characteristic that may make them more vulnerable to discrimination, such as sex, race, age, or sexual orientation, for example. Anti-discrimination legislation is focused on effectively eradicating discrimination, of which punishing perpetrators may only be a small part. The use of anti-discrimination legislation to prohibit sexual harassment was pioneered in the United States, which addresses sexual harassment at the federal level through Title VII of the Civil Rights Act. (See: [Approaches to and Remedies under Sexual Harassment Law](#), StopVAW, The Advocates for Human Rights.)

Sexual harassment as discrimination

Anti-discrimination legislation allows for protection against multiple types of discrimination and thus can provide important protections to women who may face harassment on multiple grounds at once, such as race and sex, or sexual orientation and sex. Virtually all sexual harassment legislation around the world prohibits discrimination on the basis of sex.

In order to effectively address all sexual harassment, laws should also broadly protect victims from harassment that may be perpetrated based on an array of sexually-based characteristics of the victim, such as sexual orientation and gender identity or expression. Legislation should cover these categories whether the characteristic is actual or perceived. Also, legislation should explicitly prohibit harassment on the basis of actual or perceived association with others in one of the covered categories. These principles may also be particularly important in [educational settings](#). (See: National Center for Lesbian Rights, [Federal Cases Recognizing that Discrimination on the Basis of Gender Non-conformity and/or Transgender Status is a Form of Discrimination on the Basis of Sex](#), 2006; National Center for Lesbian Rights, [Guidance for Drafting State Safe Schools Legislation](#), 2002.)

CASE STUDY – Ireland

Like many countries, Ireland addresses sexual harassment in several different laws. It addresses some forms of sexual harassment in broad anti-discrimination legislation which also covers discrimination on the basis of race, sexual orientation, marital status, age, disability, etc. The Equal Status Act, quoted below, does not address sexual harassment in the workplace – that issue is covered in Ireland’s Employment Equality Act of 1998 – but prohibits harassing conduct in several other contexts, including the provision of goods and services, accommodation, and education. It also provides that proprietors and “responsible persons” can be held liable for acts of harassment occurring in their zone of responsibility, unless they take reasonable measures to prevent such acts.

Sexual harassment takes place where a person—

(a) subjects another person (“the victim”) to an act of physical intimacy,

(b) requests sexual favours from the victim, or

(c) subjects the victim to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of written words, pictures or other material, where—

(i) the act, request or conduct is unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating to him or her, or

(ii) the victim is treated differently by reason of his or her rejection of or submission to, as the case may be, the act, request or conduct or it could reasonably be anticipated that the victim would be so treated.

(5) Harassment takes place where a person subjects another person (“the victim”) to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material, which in respect of the victim is based on any discriminatory ground and which could reasonably be regarded as offensive, humiliating or intimidating to him or her. [Equal Status Act of 2000](#), sec.11.

CASE STUDY – Mauritius

In 2008, Mauritius passed landmark anti-discrimination legislation that included provisions on sexual harassment in employment, provisions of goods and services, accommodation, etc. The law defined sexual harassment, made it a criminal offense, and laid out in article 26 which areas of public life are covered by the prohibition:

- (1) *No employer, or agent of an employer, shall sexually harass an employee or a person seeking employment from the employer.*
- (2) *No job contractor or principal shall sexually harass a contract worker.*
- (3) *No employee shall sexually harass a fellow employee or a person seeking employment from his employer.*
- (4) *No agent of an employment agency shall sexually harass a person in the course of providing, or offering to provide, any of the agency's services to that person.*
- (5) *No person referred to in section 15, or his employee, shall sexually harass another person in relation to the conferment, renewal, extension, revocation or withdrawal of an authorisation or qualification referred to in that section.*
- (6) (a) *No member of the staff of an educational institution shall sexually harass a student at the institution or a person who is seeking admission as a student.*
(b) *No student at an educational institution shall sexually harass another student or a member of the staff.*
- (7) *No person referred to in section 18 shall sexually harass another person in the course of providing or offering to provide goods, services or facilities to the other person.*
- (8) *No person referred to in section 19 shall sexually harass another person in the course of providing, or offering to provide, accommodation to the other person.*
- (9) *No person shall sexually harass another person in the course of dealing with the other person in connection with –*
 - (a) *disposing, or offering to dispose of, any immovable property to the other person; or*
 - (b) *acquiring, or offering to acquire, any immovable property from the other person.*
- (10) *No officer or member of a company, partnership, "société", registered association or club shall sexually harass a member or other member, as the case may be, or a person seeking to become a member.*

See: [Equal Opportunities Bill](#) (2008).

Enforcement & oversight

Anti-discrimination laws also generally designate a specific oversight body with power to enforce the legislation, such as an equality commission or a national human rights institution. Enforcement agencies should be empowered under law to facilitate:

- Filing of complaints;
- Investigation of complaints;
- Resolution or settlement of claims through conciliation or adjudication;
- Gathering data on the problem;
- Recommendations for systems or legislative reform; and
- Support to victims throughout the process.

Examples of such enforcement bodies with oversight of sexual harassment issues include:

- [Australian Human Rights Commission](#)
- [Canadian Human Rights Commission](#)
- [European Union National Equality Bodies](#)
- [Korean Human Rights Commission](#)

CASE STUDY - South Africa

The government of South Africa has created several entities that are involved in sexual harassment monitoring, enforcement and policy-making. In accordance with the [Promotion of Equality and Prevention of Unfair & Discrimination Act](#), the [South African Human Rights Commission](#) Equality Unit (1) assists sexual harassment complainants to begin proceedings in equality court, particularly complainants who are disadvantaged, (2) conducts investigations into sexual harassment cases and makes recommendations as directed by the court regarding persistent violations of the act or cases of harassment referred to them by an equality court, and (3) requests regular reports from the department of justice and constitutional development regarding the number of sexual harassment cases and the nature and outcome of these cases. (See: [Promotion of Equality and Prevention of Unfair & Discrimination Act](#) (2000), para. 25(3)) In cooperation with the Human Rights Commission, the [South African Commission on Gender Equality](#) addresses issues relating to sexual harassment as well. The functions of this commission include research on sexual harassment for the benefit of parliament and other authorities as well as education and investigations relating to sexual harassment. (See: [Commission on Gender Equality Act 1996](#); [Monitoring Workplace Practices and Enforcing Sexual Harassment Law](#), StopVAW, The Advocates for Human Rights.)

Sexual harassment in employment

Laws prohibiting sexual harassment emerged in the context of the discrimination and outright violence that women experience in the workplace. Workplace sexual harassment law is by far the most developed and most commonplace around the world. In the United States, where sexual harassment laws and judicial decisions were first developed in the 1970s, courts recognized that women experienced harassment in two common forms. First, quid pro quo harassment, where the victim's refusal or acceptance of behavior influences decisions concerning her employment or conditions of employment, e. g. a manager tells his assistant, "Perform a sexual favor for me and you will [/or you will not] get promoted." Second, hostile work environment claims, in which the harasser's or harassers' behavior creates an intimidating, hostile, degrading, humiliating, or offensive environment, e.g., male employees make daily comments over a period of time about the sexual life and body of their female co-worker. (See: [Williams v. Saxbe, 413 F. Supp 654 \(Ct. App. D.C. 1976\)](#))

Definition

Legal definitions of sexual harassment in the workplace should include the following elements:

- Occur in the [place of work or in a work related environment](#);
- Occur [because of the person's sex and/or it is related to or about sex](#);
- Be [unwelcome, unwanted, uninvited, not returned, not mutual](#); and
- Affect the terms or conditions of employment ([quid pro quo sexual harassment](#)) or the work environment itself ([hostile environment sexual harassment](#)).

(See: [What is Sexual Harassment](#), StopVAW, The Advocates for Human Rights.

Workplace laws should also reflect the [General Principles for sexual harassment laws](#) discussed in that section)

Legal definitions should cover all work-related activities as well as a wide array of work-based relationships, not solely supervisors harassing employees.

CASE STUDY – New South Wales

In New South Wales, Australia, workplace sexual harassment is included in broad anti-discrimination legislation and the law provides a detailed exposition of where sexual harassment might occur and by whom it might be perpetrated.

- (1) *It is unlawful for an employer to sexually harass:*
 - (a) an employee, or
 - (b) a person who is seeking employment with the employer.
 - (2) *It is unlawful for an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.*
 - (3) *It is unlawful for a person to sexually harass:*
 - (a) a commission agent or contract worker of the person, or
 - (b) a person who is seeking to become a commission agent or contract worker of the person.
 - (4) *It is unlawful for a commission agent or contract worker to sexually harass a fellow commission agent or fellow contract worker.*
 - (5) *It is unlawful for a partner in a partnership to sexually harass another partner, or a person who is seeking to become a partner, in the same partnership.*
 - (6) *It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of both those persons.*
 - (7) *It is unlawful for a member of either House of Parliament to sexually harass:*
 - (a) a workplace participant at a place that is a workplace of both the member and the workplace participant, or
 - (b) another member of Parliament at a place that is a workplace of both members.
 - (8) *It is unlawful for a workplace participant to sexually harass a member of either House of Parliament at a place that is the workplace of both the member and the workplace participant.*
 - (9) *In this section: “place” includes a ship, aircraft or vehicle. “workplace” means a place at which a workplace participant works or otherwise attends in connection with being a workplace participant. “workplace participant” means any of the following:*
 - (a) an employer or employee,
 - (b) a commission agent or contract worker,
 - (c) a partner in a partnership,
 - (d) a person who is self-employed,
 - (e) a volunteer or unpaid trainee.
 - (10) *Without limiting the definition of “workplace”, the workplace of a member of either House of Parliament is taken to include the following:*
 - (a) the whole of Parliament House,
 - (b) any ministerial office or electoral office of the member,
 - (c) any other place that the member otherwise attends in connection with his or her Ministerial, parliamentary or electoral duties.
- (See: [Anti-Discrimination Act](#), sec. 22B)

The New South Wales law also covers harassment and discrimination in a multitude of other areas, including education, sport, provision of goods and services, and property transactions. Judicial decisions in Australia have enforced these types of provisions. The Australian Department of Defense was held liable for sexual harassment by one of its employees even when the most serious incident took place at a private party hosted in a private home by other department employees. See: [Lee v. Smith & Ors, FMCA 59 \(Australia 2007\)](#).

Types of Prohibited Behavior

- It is important that sexual harassment laws prohibit both sexual and sex-based behavior. The most commonly reported form of sexual harassment is “conduct of a sexual nature.” This means actions, language or visual materials which specifically refer to, portray or involve sexual activity or language. Conduct of a sexual nature may include overt sexual solicitations, inappropriate touching, sexual jokes, and inquiries about a person’s sex life. Sex-based harassment is conduct that occurs because of the sex of the intended victim but is not necessarily sexual in nature. Examples of this kind of behavior are disparaging comments on the role of women, or discriminatory treatment aimed only at women. (See: ILO, [Sexual Harassment at Work: National and international responses](#), 20, 2005.)
- The Council of the European Union [Directive 2006/54/EC](#) mandates that all European Union countries prohibit both sexual and sex-based harassment in their national laws. The directive provides the following definitions:

‘harassment’: where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

‘sexual harassment’: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;
- The International Labour Organization has defined sexual harassment to include both sexual and sex-based behavior with specific examples:

[A]ny insult or inappropriate remark, joke, insinuation and comment on a person’s dress, physique, age, family situation, etc; a condescending or paternalistic attitude with sexual implications undermining dignity; any unwelcome invitation or request, implicit or explicit, whether or not accompanied by threats; any lascivious look or other gesture associated with sexuality; and any unnecessary physical contact such as touching, caresses, pinching or assault.

(See: ILO, [Sexual Harassment at work: National and international responses](#), 2005.)
- Providing concrete examples of the types of prohibited behavior can assist in interpretation of the law, but it is important for drafters to be aware that language should be carefully crafted so as not to inadvertently exclude certain types of behavior.

CASE STUDY – Landmark Cases in India and Bangladesh

In 1997, a group of activists and NGOs in India filed a class action alleging that the pervasive sexual harassment of women in the workplace violated several articles of the Constitution of India. Specifically, the action alleged that sexual harassment violated the right to gender equality, the right to life and liberty, and the right to practice any profession, trade, or occupation. The case was filed after the brutal gang rape of a social worker in Rajasthan. The Court noted that the laws in India had not sufficiently protected the rights of women workers and that the Court had a duty to “fill the legislative vacuum.” (See: [Vishaka and others v. State of Rajasthan](#), para. 3)

In its opinion, the Court stated that “[g]ender equality includes protection from sexual harassment and [the] right to work with dignity, which is a universally recognized basic human right.” (Vishaka, para. 10) The Court also specifically referenced the Convention on the Elimination of All Forms of Discrimination Against Women, recognizing the Indian government’s ratification of CEDAW and its commitments regarding women’s rights made at the Fourth World Conference on Women in Beijing.

The Court went on to define sexual harassment broadly as “unwelcome sexually determined behavior (whether directly or by implication)” including:

- Physical contact and advances;
- A demand or request for sexual favors;
- Sexually colored remarks;
- Showing pornography;
- Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

(Vishaka, para. 16(2)).

The Court also stated that when:

any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

(Vishaka, para. 16(2)).

Vishaka has had broad implications in India and beyond. Several cases have come before the Indian courts and led to further interpretation of *Vishaka*. Moreover, in 2008, a coalition of NGOs in Bangladesh filed a petition similar to that in *Vishaka* alleging that sexual harassment constituted a violation of Bangladesh's constitution. Following much of the reasoning of *Vishaka*, and quoting the Indian Supreme Court among others, the Supreme Court of Bangladesh issued guidelines with the force of law similar to those issued in *Vishaka*. The Court went even further in defining the types of conduct that could constitute sexual harassment, adding the taking of "still or video photographs for the purpose of blackmailing and character assassination; preventing participation in sports, cultural, organizational and academic activities on the ground of sex and/or for the purpose of sexual harassment; making love proposal and exerting pressure or posing threats in case of refusal to love proposal", etc. (See: [Bangladesh National Women Lawyers Association v. Gov. of Bangladesh and Others](#) (2009)) Bangladesh's law continues to be interpreted by the courts. A decision in 2010 confirmed that the guidelines issued in *Bangladesh National Women Lawyers Association* apply to women working in the educational setting. It found that a government education official who verbally abused a school headmistress in sexually colored remarks during a public meeting of her school because she did not wear a veil at the meeting had engaged in sexual harassment. (See: *Advocate Salahuddin Dolon v. Bangladesh* (2010); [Women can't be forced to wear veil](#), Women Magazine of Bangladesh, April 15, 2010)

Theories of workplace sexual harassment

- Laws that protect workers from sexual harassment may reflect different theories of sexual harassment. Laws may treat sexual harassment as discrimination based on sex, as an offense against dignity, or as an issue of health and safety in the workplace. In many developing countries, sexual harassment is viewed as an offense against dignity that results in criminal punishment for the perpetrators. Laws in the United States are based on a view of sexual harassment as a form of discrimination resulting in employer liability. In many European countries, sexual harassment law appears to incorporate the discrimination perspective, the dignity perspective, and the health and safety perspective.
- Since the 1980s in Europe, there has been an increasing focus on behaviors described as "moral harassment," "mobbing," or "workplace bullying." (See: [The Mobbing Encyclopedia](#); EIRO Online, [Increasing focus on workplace 'mobbing'](#), 2004) By de-emphasizing the issue of gender, this approach moves harassment law away from a theory of discrimination and violence against women toward broader questions of individual dignity and health and safety on the job. One positive result of such an approach is that it may be more inclusive of a wide variety of harassment claims, e.g. harassment claims made by a victim against an individual of the same gender. However, this approach shifts the focus away from an underlying cause of much sexual harassment, the subordination of

women to men in the workplace. The workplace bullying concept often also includes a health component as well: degrading treatment or “psychoterror” in the workplace may be regulated in part due to the effects of such treatment on the mental health of workers.

- The three dominant conceptions of sexual harassment—a form of discrimination, an offense against dignity, and a health and safety violation—need not be understood as mutually exclusive approaches to sexual harassment law. National laws in all European Union member states must comply with the [Council of the European Union Directive 2006/54/EC](#), which characterizes sexual harassment as both a form of sex discrimination and a violation of dignity in the workplace. For example, the [French Penal Code](#), in article 222-33, prohibits both “sexual harassment” and “moral harassment” which is defined as a violation of dignity, a danger to health, and a form of discrimination. The prohibited conduct does not necessarily have to be related to the gender of the victim. Adapted from: [Theories of Workplace Harassment](#), StopVAW, The Advocates for Human Rights.

Employer obligations under law

Laws should obligate employers to take all reasonable measures to create a safe working environment for women. For example, law in Benin requires that the head of an employment organization is responsible for taking all necessary measures to prevent sexual harassment. (See: [Loi sur le Harcelement Sexuel](#), 2006) Finland requires that employers “ensure, as far as possible, that an employee is not subjected to sexual harassment.” See: [Act on Equality between Women and Men](#), sec. 6. At a minimum this requires that employers respond immediately to allegations of harassment and take corrective action when necessary. Employer obligations under law should also include workplace policy development and dissemination, regular training, adoption of effective grievance and investigation procedures, as well as data collection and reporting.

Immediate Response

All laws should require that employers take immediate action with respect to sexual harassment claims. This involves documenting the complaint, taking measures to stop any alleged harassment, beginning an investigation, and providing support for the victim. In Belize, for example, an “employer shall take immediate and appropriate action to correct any act of sexual harassment towards employees in the workplace, where the employer, his agents or his supervisors know or are informed of such conduct.” See: [Protection Against Sexual Harassment Act](#), Part ii, sec.4)

CASE STUDY – Chile

In 2003, the Supreme Court of Chile upheld a claim based on sexual harassment despite the absence, at that point, of any specific law prohibiting it. The plaintiff in the case had notified her supervisor's superior of the ongoing harassment, but the employer did nothing to alleviate it. The plaintiff suffered emotionally and eventually had to take a medical leave for work-related stress as a result of continued sexual harassment by her direct supervisor. The court upheld the plaintiff's claim of indirect dismissal resulting from a violation of section 184 of the Código del Trabajo, which requires employers to protect the health and safety of their workers. The court also noted article 19 of the Carta Fundamental (which recognizes every person's right to life and physical and psychic integrity as well as to respect and protection of private life and personal and family honor) in condemning the employer's lack of action. The court also stated that the employer did not act in good faith in the context of its performance of the employment contract. The court did not legally define sexual harassment, only stating that the plaintiff correctly characterized her situation as sexual harassment. A 2008 indirect dismissal claim was upheld on similar grounds when another employer was made aware of sexual harassment but did nothing to remedy the situation. See: Corte Suprema, 09/04/2003, 27092002 [Giovanna Riveri Cerón con Fundación Comunicaciones Cultura Capacitación Agro](#); Corte de Apelaciones de Santiago, 27/05/2008, 44752007 Paola González Miranda con Rodríguez Peñaloza y Compañía.

Policy Development

Laws should require employers to establish and publicize to all employees and non-employees in the workplace a policy prohibiting sexual harassment and encouraging employees and non-employees to report the behavior. In the Philippines, for example, employers are obligated to “[p]romulgate appropriate rules and regulations in consultation with and jointly approved by the employees...The said rules and regulations issued pursuant to this subsection (a) shall include, among others, guidelines on proper decorum in the workplace.” See: [Republic Act No. 7877](#), sec. 4. The policy should encourage reporting before the harassment becomes severe or pervasive. The organization should permanently post the policy in the workplace and review the policy periodically. The harassment policy of the organization should be adopted by an appropriate decision maker at the organization and should identify this decision maker as the person ultimately responsible for preventing harassment at the organization. The policy should state the range of disciplinary actions that may be taken against an employee who has sexually harassed another employee or who has retaliated against an employee who has made a sexual harassment allegation or who has served as a witness in a sexual harassment investigation. Policies should also provide for corrective action that will place an employee in the position she or he would have been in had the harassment not taken place. The Lagos Business School of the Pan-African University in Nigeria has posted [sample sexual harassment policies](#) that are designed for small and medium enterprises – the samples are not based on any specific national legal framework. (See: [Employer Responsibilities](#), StopVAW, The Advocates for Human Rights)

CASE STUDY – South Africa’s Code of Good Practice

In South Africa, the National Economic Development and Labor Council (NEDLAC) has promulgated a Code of Good Practice on The Handling of Sexual Harassment Cases in the Workplace. Although not binding law, the code outlines guiding principles for the investigation of reports of harassment, confidentiality, training, and development of procedures for addressing sexual harassment. The code also provides guidelines on disciplinary procedures such as warnings for minor instances, transfer of the offender to a new position, or dismissal for serious conduct or continued harassment after warnings.

(See: [Sexual Harassment and the Amended Code of Good Practice on the Handling of Sexual Harassment in South Africa](#), Women’s Legal Centre (2006); UN Secretary-General’s database on violence against women, [Code of Good Practice on the Handling of Sexual Harassment issued under the Labour Relations Act.](#))

Regular Training

- Employers should be required under law to conduct training programs on sexual harassment prevention. Periodically, supervisors and managers should receive extensive training so that they may explain the organization’s sexual harassment policy to their staff and take steps to positively promote the policy. They should be trained to be responsive and supportive to any member of staff who complains about sexual harassment, provide full and clear advice on the complaint procedure, maintain confidentiality regarding all sexual harassment complaints, and take steps to prevent the occurrence of further harassing behavior. A sample [Sexual Harassment Prevention](#) employee training program is available online from the US state of New York.
- Employers should monitor the compliance of supervisors and managers with their responsibilities. Law in the U.S. state of California requires employers with more than 50 employees to provide sexual harassment training to supervisory employees every two years or within six months of hiring a new employee, and also lays out quality standards for the required trainings. Drafters may also want to consider other preventive measures, such as vetting requirements. During a vetting process, applicants for supervisory or managerial positions should be screened for a record of harassment and possibly rejected on the basis of such a record. (See: Christopher E. Cobey and David N. Goldman, [Sexual Harassment Prevention Training Now Mandatory for California Employers](#); [Employer Responsibilities](#), StopVAW, The Advocates for Human Rights)

Investigation & Grievance Procedures

Laws should require that employers establish a complaints committee or designate a complaints officer outside the line of management whom victims of sexual harassment may approach for confidential advice or to make a complaint. Any complaints committee

should have at least 50% representation by women. It is recommended that a third party (non-governmental organization or other body familiar with the issue) be involved in any complaints committee so as to avoid the possibility that senior levels of the organization would exert undue influence on the committee. Such a third party may include a trade union representative or co-employee or outside professionals. The committee should include members with experience in counseling, employee relations, and conducting investigations. The complaints committee or designated complaints officer should maintain confidential records of all harassment complaints, prepare an annual report summarizing the activities during the previous year, and forward a copy of the report to the head of the organization. For example, under Israeli law employers must “(1) prescribe an efficient procedure for filing a complaint in respect of sexual harassment and for the examination of the complaint; (2) deal efficiently with a case of sexual harassment or of adverse treatment which has come to his notice and do everything within his power to prevent the recurrence of the said acts and to rectify the harm caused to the complainant as a result of sexual harassment or adverse treatment.” The Lagos Business School of the Pan-African University in Nigeria has posted [sample sexual harassment policies](#) for small and medium enterprises that include sample guidelines for, and actions to take as part of, an internal sexual harassment investigation – the samples are not based on any specific national legal framework. The Canadian Human Rights Commission also has an extensive [Employer’s Guide](#) to assist small, medium, and large employers with developing a sexual harassment policy, although the guide is based on Canadian law. (See: [Prevention of Sexual Harassment Law](#), sec.7; [Employer Responsibilities](#), StopVAW, The Advocates for Human Rights)

CASE STUDY – The Case of Ntsabo v. Real Security

In November 2003, the Labour Court of South Africa, presiding in Cape Town, delivered its judgment in a landmark case that held an employer liable for failing to take any action to investigate reported sexual harassment or to protect its employee from such conduct. The case involved a female security guard who was repeatedly harassed and ultimately assaulted by a fellow employee. The employee reported the incidents to her supervisor and the employee’s brother made a complaint to the company’s head office after the assault on his sister. The company took no action and the employee ultimately resigned. The Labour Court stated that:

For the purpose of the EEA [Employment Equity Act], failure of the Respondent to attend to the problem brings the whole issue within the bounds of discrimination. The nub of the complainant laid with the Respondent involved sexual harassment. Its failure to attend to the matter is by definition...discrimination based on sexual harassment.

This was the first decision by a Labour Court in South Africa addressing the liability of an employer for sexual harassment as a form of discrimination based on sex. See: [Bongiwe Ntsabo v. Real Security CC \(Labour Court of South Africa \(2003\)\)](#); [Ntsabo v. Real Security](#), Women’s Legal Centre.

Reporting

Gathering data on and reporting about sexual harassment should be required by law so as to enable effective national policy action and coordination. In Sweden, for example, employers with 25 or more employees are required to submit a gender equality plan, which includes measures to combat sexual harassment, to the government every three years and are required to report on the implementation of their proposed measures. (See: [Discrimination Act of 2008](#), sec. 13) (Cross link to [Monitoring Chapter](#))

CASE STUDY – Costa Rica

The [Act No. 7476 on Sexual Harassment in the Workplace and in Education](#) prohibits sexual harassment in the workplace in Costa Rica and places certain duties on employers. Companies have an obligation to act quickly and diligently to resolve complaints of harassment in the workplace. Employers also are obligated to report incidents of sexual harassment to the Ministry of Labor. In a 2008 court case, a female employee of a refrigeration company received lewd emails and was the subject of unwelcome advances. The court chastised the company for not immediately reporting the incident to the Ministry of Labor and also explicitly said that this harassment was a form of discrimination in the workplace. For both reasons, the court fined the company 350,000 colones. See: Sentencia [S.] No. 00038, de las 23 Enero 2008, Sala Segundo de la Corte Suprema de Justicia [Supreme Court, Chamber II], Cons. IV.

Employer liability under law

Employer liability for the acts of employees and others associated with the employment relationship should be expressly written into legislation, along with safeguards for employers who establish effective policies and take immediate action upon being informed of harassing conduct. Making employers liable for the safety of their workplace and for protecting their employees against discrimination and violence is an important way to prevent sexual harassment by ensuring institutional accountability. (See: [Employer Liability Standards](#), StopVAW, The Advocates for Human Rights.)

- *Australia's approach:* An Australian employer may be held vicariously liable for sexual harassment committed by its employees if the employer did not take all reasonable steps to prevent the misconduct. For example, one employer was found not to have taken all reasonable steps to prevent unwanted sexual touching and comments by an employee. The employer's managing staff had prior knowledge of the harasser's harassing conduct toward previous employees but "had failed to recognize his behavior as potentially unlawful, or implement appropriate monitoring strategies to ascertain whether staff felt humiliated, intimidated, or offended. This inaction permitted the harasser to continue conducting himself 'as usual'" and was deemed by the court to be an implicit authorization of the harassing conduct. The employer was found liable for the harassment even though it had taken prompt action to investigate the matter and dismiss the harasser. In 2009, Australian courts awarded a record monetary

settlement to a woman who had been propositioned for sex and was sent harassing text messages while working for a home building company. She was fired when she complained about the harassment. Her employer was ordered to pay \$466,000 in damages based on the actions of two employees and also was required to pay for her legal fees. The Australian courts require that employers take all reasonable steps to prevent harassment, including the training of managers and the establishment of clear reporting procedures. (See: Geraldine Dann, et al., [Are you liable? Sexual Harassment in the Workplace](#), 2003; [Federal Discrimination Law Ch. 7 Damages and Remedies](#), Australian Human Rights Commission; [Huge payout for sexual harassment victim](#), Australian Broadcasting Company, June 23, 2009)

- *Canada's approach:* The Canadian Human Rights Commission has summarized the Canadian courts' employer liability standard for cases involving sexual harassment in the workplace as follows:

Ultimately, employers are responsible for acts of work-related harassment. The Supreme Court has said that the goal of human rights law is to identify and eliminate discrimination. Employers control the organization, and are therefore the only ones who can actually reverse the negative effects of harassment and ensure a healthy work environment. So no matter what kind of workplace or business the employer operates, there is a responsibility to make sure employees do not experience harassment. If harassment does occur, the employer must show that it did everything possible to prevent it, or to alleviate its effects.

See: Canadian Human Rights Commission, [Anti-Harassment Policies for the Workplace: An Employer's Guide](#), 2006.

- *Colombia's approach:* In Colombia, individuals have a constitutional right to work. Equality at work also is protected in the Constitution and Labor Code. [Law 1010 of 2006](#) defines employment discrimination as any different treatment on the basis of race, gender, family or national origin, religious creed, political preference, social status, or other factors not pertinent to employment. It recognizes employment discrimination as a prohibited form of employment harassment. Using offensive language about an employee that references her gender is considered to be employment harassment. Law 1010 applies to both the public and private sectors. Employers are required to put in place mechanisms to prevent workplace harassment and to establish an internal, confidential procedure to resolve any incidents of harassment. Victims have several avenues for redress including contacting the local labor inspectorate, municipal police, public defender's office, or municipal representative. If the situation continues, victims have the right to ask for an authorized mediator or conciliator. Unless specified in other laws, Law 1010 imposes a fine totaling two to 10 months of the legal minimum monthly salary for the person who committed the harassment and the company that tolerated it. The employer is also responsible for paying 50 percent of all medical treatment and other related costs resulting from the harassment. (See: U.S. Dept. of Labor, [Colombia Labor Rights Report](#), 35-36 (2008))

- *Japan's approach:* In Japan, courts have applied Article 709 of the Civil Code to hold harassers and employers liable for sexual harassment in the workplace. Article 709 defines as torts all actions in violation of the equality principles set out in the Constitution. As a result, Japan's approach to employer liability standards is based on a doctrine of tort law, respondeat superior. Respondeat superior holds an employer liable for the wrong-doing of an employee when the misconduct is committed within the scope of employment. This doctrine of vicarious liability may be used to hold an employer in Japan responsible for acts of sexual harassment committed by an employee. From: [Employer Liability Standards](#), StopVAW, The Advocates for Human Rights.
- *United States approach:* In the United States, where sexual harassment law originated, courts apply three different standards in workplace sexual harassment cases, depending on the type of harassment involved and the role of the harasser in the organization.
 - Supervisor/ Quid Pro Quo Harassment: The U.S. Supreme Court has held that an employer is always liable for a supervisor or manager's harassment if it results in a tangible employment action. Tangible employment actions include demotion, firing, or unfavorable changes in work assignment. (See: [Burlington Industries, Inc. v. Ellerth](#), 118 S. Ct. 2257 (1998); [Faragher v. City of Boca Raton](#), 118 S. Ct. 2275 (1998); U.S. Equal Employment Opportunity Commission, [Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors](#), 1999) It can also include employee resignation, under the constructive discharge doctrine, if the employee can show the "abusive working environment became so intolerable that her resignation qualified as a fitting response." (See: [Pennsylvania State Police v. Suders](#), 542 U.S. 129 (2004))
 - Supervisor/ Hostile Work Environment Harassment: In order to encourage employers to adopt sexual harassment policies and restrict the application of automatic liability in cases of hostile work environment harassment, the U.S. Supreme Court has held that, if supervisor harassment does not involve a tangible employment action, the employer may be able to escape liability or limit damages by establishing a specific affirmative defense. To establish this defense, the employer must show (1) that it exercised reasonable care to prevent and promptly correct any harassing behavior, and (2) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. (See: [Burlington Industries, Inc. v. Ellerth](#), 118 S. Ct. 2257 (1998); [Faragher v. City of Boca Raton](#), 118 S. Ct. 2275 (1998); U.S. Equal Employment Opportunity Commission, [Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors](#), Notice No. 915.002 (June 18, 1999))
 - Co-Worker or Non-Employee/ Hostile Work Environment Harassment: U.S. courts and the U.S. Equal Opportunity Employment Commission have determined that, in respect of sexually harassing conduct by one co-worker

toward another, an employer is liable for this hostile work environment harassment if the employer (or any of its agents or management level employees) knew or should have known of the misconduct. The employer can escape liability, however, if it can show that it took immediate and appropriate corrective action. The standard of liability is the same for harassment committed by non-employees such as clients or vendors of the employer. In non-employee cases, however, the Commission also takes into account “the extent of control and any other legal responsibility which the employer may have with respect to conduct of [harassing] non-employees.” (See: U.S. Equal Employment Opportunity Commission, [Guidelines on Discrimination Because of Sex](#), 29 C.F.R. s.1604.11(d) and (e); U.S. Equal Employment Opportunity Commission, [Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors](#), Notice No. 915.002 (June 18, 1999); [Burlington Industries, Inc. v. Ellerth](#), 118S.Ct.2257 (1998); (affirming a dismissal of a claim of sexual harassment against co-workers where there was no witness testimony or report filed by the victim to indicate that the employer or managing employees should have known about the harassment))

(From: [Employer Liability Standards](#), StopVAW, The Advocates for Human Rights)

Establishing enforcement agencies and special tribunals

Laws on sexual harassment should designate a specialized entity that is responsible for enforcement of sexual harassment prohibitions. Often these bodies are national human rights or anti-discrimination commissions with oversight of a number of areas. (See [Anti-Discrimination Laws](#)) The Caribbean Community has drafted a model law on sexual harassment that provides for the establishment of a permanent specialized tribunal to hear sexual harassment claims, or in the alternative, for an ad hoc tribunal to be appointed to hear specific claims. (See: [Model Law on Sexual Harassment](#), sec.6) It is critical that in the establishment of specialized enforcement units, commissions, or tribunals, those appointed to serve are experienced in handling workplace harassment cases and that at least 50% of the investigators/ members are female.

Special procedures for workplace sexual harassment cases

Drafters should include provisions that reduce the burden on victims of sexual harassment as much as possible in bringing claims. For example, including a provision for victims to request that a female investigator work on their case can make victims more comfortable discussing their claim. Allowing for class action suits, where a small group of named individuals bring a claim on behalf of a group that is similarly situated, may also provide some anonymity for victims who would otherwise be unwilling to bring claims. For example, South African law specifically provides for class action, in para. 20(1)(c) of its [Promotion of Equality and Prevention of Unfair Discrimination Act of 2000](#). Several other countries, including Australia, Israel, and Sweden allow trade unions and other employee organizations to bring claims on behalf of their members.

Employment qualification & licensing

Laws should also ensure that sexual harassment in the context of professional licensing or qualification is prohibited. This may be covered in laws regarding the provision of goods and services or in laws related to employment-based harassment. The United Kingdom's new Equality Law, for example, specifically addresses harassment in the context of entities that can "confer relevant qualifications." (See: [Equality Law](#), secs. 91-92) Mauritius' law also prohibits sexual harassment "in relation to the conferment, renewal, extension, revocation or withdrawal of an authorisation or qualification" required for professional or trade work. (See: [Equal Opportunities Act](#) (2008), Art. 26(5))

Involvement of Unions and Other Employee Groups

- Laws should provide for the involvement of employees and their representatives in the process of creating policies related to sexual harassment. Laws in the Philippines and Sweden require this type of involvement, for example.

- In the Philippines, employers must:

Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefore.

See: [Republic Act No. 7877](#), sec.4(a).

- In Sweden, anti-discrimination legislation that came into effect in 2009 mandates that:

Employers and employees are to cooperate on active measures to bring about equal rights and opportunities in working life regardless of sex, ethnicity, religion or other belief, and in particular to combat discrimination in working life on such grounds.

See: [Discrimination Act](#), Ch. 3, sec.1.

CASE STUDY: Sexual Harassment in Export Processing Zones

Export processing zones (EPZs) are special industrial centers that are set up in many developing nations. China accounts for a majority of the EPZs in the world, with the rest scattered in Central America, the Caribbean, sub-Saharan Africa, and Southeast Asia. EPZs are governed by special rules designed to attract foreign investment. Often these special rules circumvent national labor laws and prohibit trade unions from participating in negotiation and oversight. The vast majority of workers in EPZs are women, because they are often lower skilled and can be paid less so as to maximize profits. In Honduras and Jamaica, for example, 90% of EPZ workers are female. (See: Rosselson, Ruth, [What are export processing zones?](#), 106 Ethical Consumer 2007) Sexual exploitation of women and girl workers has been documented in EPZs around the world. In Kenya's EPZs, for example sexual exploitation has been extensively documented, often in the form of sex-for-jobs arrangements. In a survey of female EPZ workers in Kenya, 90% reported that they had experienced some form of sexual harassment. This often comes at the hands of mid-level supervisors who are in charge of hiring workers, but there are also systematic abuses against women. (See: [Kenya: Sex for jobs in export processing zones](#), IRIN News, Nov. 24, 2008) Discrimination against women workers who become pregnant is also a common practice in EPZs. One example is in Mexico, where employers at EPZs require female workers to take pregnancy tests. Many pregnant workers are dismissed outright, while others are given leave but never allowed to return to work. (See: [Export Processing Zones – Symbols of Exploitation and a Development Dead-End](#), International Confederation of Free Trade Unions (ICFTU)) Union involvement is often prohibited in EPZs but in the Philippines, unionization at the Mitsumi corporation's EPZ factory made a significant difference for women workers. Not only are working conditions in the plant reportedly better than at other EPZ companies, but when there was a case of sexual harassment at the factory, the union went to management and asked that the manager be punished. According to a union leader, the company took the union's advice and incidents of sexual harassment have been largely unknown since the company's action. (See: [Spotlight interview with Josephine de Jesus](#), Union Voices (2005))

Sexual harassment in education (See also *Education Module – Forthcoming*)

- Legislation related to sexual harassment in education is critical to ensuring women's and girl children's right to education in an environment free from discrimination and violence. Sexual harassment in schools and other educational settings is a prevalent problem around the world. A 2001 report by Human Rights Watch documented extensive harassment and violence perpetrated by teachers and male students against girls in South African schools. In Malawi, 50% of surveyed school girls reported experiencing sexual harassment. A study of school girls in one south Indian state also documented girls' vulnerability to harassment. A recent Czech study suggests that more than 75% of Czech university students had been harassed at some point during their schooling. The American Association of University Women reports that 81% of students in the U.S. experience some form of sexual harassment during their schooling. This study further states that 40% of surveyed students reported that teachers and other staff sexually harass students in their school. (See: Human Rights Watch, [Scared at School](#), 2001; [UNiTE Fact Sheet - How prevalent is violence against women?](#) (Feb. 2008); Fiona Leach & Shashikala Sitaram, [Sexual harassment and abuse of adolescent school girls in South India](#), 2 Education, Citizenship and Social Justice 257 (2007); [Study finds high levels of sex harassment at Czech Universities](#), Jan. 15, 2010; AAUW, [Harassment-Free Hallways: How to Stop Sexual Harassment in School](#), 2004)
- Like workplace sexual harassment, a multi-level approach is required to address harassment in educational settings. But because sexual harassment in schools negatively affects children, often leading to higher dropout rates among schoolgirls, legislation and policy must be very aggressive. In addition, national legislation and local policy must address the fact that students may also be perpetrators of sexual harassment in the educational setting. This requires special consideration in the drafting of law and policy.

Core elements for sexual harassment laws in the educational setting

As with sexual harassment in other settings, many countries deal with sexual harassment in educational settings through a variety of legal regimes, including criminal law, anti-discrimination legislation, and education laws, as well as local policies and disciplinary codes. Laws should:

- Prohibit harassment by teachers, staff, and fellow students, keeping in mind the age of alleged student perpetrators;
- Prohibit harassment of admitted students as well as those students seeking admission to educational institutions;
- Reflect a zero-tolerance policy for sexual relationships between teachers and students;
- Make schools financially liable for harassment that occurs on their premises or during school-related activities;

- Require that all educational institutions, both public and private, have sexual harassment prevention policies;
- Require that sexual harassment policy information be made available to students, parents, and staff in an accessible way (ie. training, posting policies in easily visible locations, translating policies into other languages).

Teachers/staff harassing students

Sexual harassment in education may be explicitly prohibited or may be subsumed by legislation that prohibits harassment in any relationship of dependency or special trust.

- Estonia's [Gender Equity Act](#) defines sexual harassment as taking place "in any subordinate or dependent relationship, any form of unwanted verbal, non-verbal or physical activity or conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment..." (Ch. 1, art.3(5)).
- Israel's law, taking a middle approach, makes special provision for "a minor or a helpless person, where a relationship of authority, dependence, education or treatment is being exploited." (See: [Prevention of Sexual Harassment Law](#), Art. 3(a)(6)(a))
- Criminal law in Kenya specifically addresses teachers and other school staff. Kenya's [Sexual Offences Act](#), sec. 24(4), provides for a prison sentence of not less than ten years for:

any person who being the head teacher, teacher or employee in a primary or secondary school or special institution of learning whether formal or informal, takes advantage of his or her official position and induces or seduces a pupil or student to have sexual intercourse with him or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement.
- In the UK, the [Sexual Offences Act](#), Part 1, sec.sec.16, 21-22, makes any sexual relationship, sexual touching, and several other types of sexual activity criminal when an adult is in a position of trust in relation to a child, including a teacher or staff in an educational institution.
- Legislation should clearly state that prohibition of sexual harassment applies equally to teachers and to other adults in the educational setting. Sweden's law specifies that "employees and contractors engaged in [educational] activities shall be equated with the education provider when they are acting within the context of their employment contract." See: [Discrimination Act](#), Ch. 1, sec. 5.

CASE STUDY – Benin

In the West African country of Benin, harassment of girls in school has been commonplace. Approximately half of girls in Benin enroll in school and many end up dropping out because of the hostile environment created by continual pressure for sexual favors from teachers or fellow students. Girls who report sexual harassment often are accused of leading a teacher on and may be forced to drop out of school by parents as a result. See: USAID Women’s Legal Rights Initiative, [Annual Report on Good Practices, Lessons Learned, and Success Stories](#), 12, 2006; [Benin bans harassment](#), WILPF, July 26, 2006. With the long-term support of international partners and in consultation with civil society, Benin in 2006 passed a broad law aimed at preventing and punishing sexual harassment of women and girls. The law clearly targets the educational setting. Under the new law, judges can order specific measures of support and care for child victims of harassment, including placement in a new supportive educational setting and monetary support for the minor victim. These special measures for care for harassed children can be reopened for judicial review at any time upon request of the child’s parent or guardian. The law also specifies a range of penalties and states that for harassment of minors the maximum penalty should be imposed. See: [Loi sur le Harcelement Sexuel](#), 2006.

Zero-tolerance for teacher-student sexual relations

- Laws on sexual harassment in the education setting should prohibit all sexual relationships between teachers and students in the same educational institution. Amendments to South Africa’s education laws in 2000 stated that an “educator must be dismissed if he or she is found guilty of...having a sexual relationship with a learner of the school where he or she is employed.” The dismissal is mandatory whether or not there was “consent.” See: [Education Laws Amendment Act](#), sec. 10. Also, such zero-tolerance policies are consistent with many laws that criminalize adults’ sexual relationships with minors generally.
- Because sexual harassment in the educational setting affects victims who often are minors and perpetrators are in a position of particular authority and trust, consensual sexual relationships should not be protected. This highlights the fact that legislative language addressing harassment in the workplace, where consensual relationships are protected, cannot simply be transposed into the educational setting.
- There is consensus that zero-tolerance for sexual relationships between students and teachers is a best practice for sexual harassment law and policies in educational settings. Education International, an organization of teachers unions from around the world, has encouraged its affiliates “to condemn such breaches of ethical standards clearly and publicly,” noting that zero-tolerance of these relationships is the only workable policy solution. See: Education International, [Combating Sexual Harassment in Schools](#), 2005.

Unwelcomeness requirement

Drafters should be aware that ‘unwelcomeness’ requirements (often imposed in sexual harassment laws in other contexts) should be reconsidered in the educational setting. Women and girls in educational settings, where teachers and other authority figures have complete control over the environment, often have no option to express that conduct is unwelcome. Unwelcomeness provisions should be removed or substantially modified when drafting laws related to the educational setting. For example, Israeli law removes the requirement for a victim to express that conduct is unwelcome when the victim is “a minor or a helpless person, [or] where a relationship of authority, dependence, education or treatment is being exploited.” (See: [Prevention of Sexual Harassment Law](#), Art. 3(a)(6)(a)) In the United States, under federal Title IX legislation, conduct must be unwelcome for it to constitute sexual harassment, but conduct is considered “unwelcome if the student did not request or invite it and considered the conduct to be undesirable or offensive.” Also, the “age of the student, the nature of the conduct, and other relevant factors affect whether a student [is] capable of welcoming the sexual conduct. A student’s submission to the conduct or failure to complain does not always mean that the conduct was welcome.” (See: U.S. Department of Education, [Sexual Harassment: It’s Not Academic](#), p.5, 2008)

Students harassing students

Laws should make clear that it is prohibited for students to sexually harass other students, sometimes known as peer-to-peer harassment. Laws that prohibit any person from committing harassment in the course of educational activities generally include this behavior. Some countries have chosen to specifically prohibit harassment perpetrated by students. Legislation in New South Wales, Australia provides that students over the age of 16 years are “adult students” and are prohibited from harassing other students or their teachers. “Adult students” are subject to sanction, but students under the age of 18 are not liable for monetary damages. (See: [Anti-Discrimination Act](#), sec. 22E) Courts may also interpret laws to cover peer-to-peer harassment, such as has been done in the United States where federal Title IX anti-discrimination legislation has been held to impose liability on school districts for peer-to-peer harassment in certain instances. (See: H. Lewis & E. Norman, *Civil Rights Law & Practice*, 290-92, 2001)

Broadly define educational institution and educational activities

- Legislation should broadly define educational institutions, so as to include public and private institutions, primary and secondary schools, as well as colleges, universities, and vocational training. Law in New South Wales, Australia, defines educational authority as “a person or body administering a school, college, university or other institution at which education or training is provided.” (See: [Anti-Discrimination Act](#), sec.4(1)) The new [Equality Law](#) in the UK makes provision specifically for schools as well as “further and higher education.”

- Laws should also make clear that students are protected from harassment connected with any of the academic, educational, extracurricular, athletic, and other programs or activities of the educational institution, regardless of where the activity takes place.

Duties of educational institutions

Legislation on sexual harassment in educational institutions should place a duty on national education ministries, regional educational bodies, and on individual schools to (1) prevent, (2) investigate and (3) effectively remedy sexual harassment.

Prevention, Policy Development & Training

- Sweden’s anti-discrimination law provides an example of a general provision imposing a duty on schools to prevent sexual harassment:

An education provider referred to in Section 14 is to take measures to prevent and hinder any child, pupil or student who is participating in or applying for their activities from being subjected to harassment associated with sex...or to sexual harassment.

See: [Discrimination Act](#), Ch. 3, sec.15.

- Laws should require that each educational institution develop and distribute an anti-harassment policy as a critical aspect of prevention.
- The U.S. state of [California’s Education Code](#), sec. 231.5, provides an example of legislation requiring that schools develop and disseminate sexual harassment policies to students and staff:

...(b) Each educational institution in the State of California shall have a written policy on sexual harassment...

(c) The educational institution’s written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution’s written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or school site. “Prominent location” means that location, or those locations, in the main administrative building or other area where notices regarding the institution’s rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution’s written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution’s written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

- In addition, schools should ensure that their policy reflects national non-discrimination laws as well as international treaty obligations on preventing violence and discrimination against women and girls. (See [International law](#) section above) The following guidelines provide a helpful framework for developing school anti-sexual harassment policies:
- A school sexual harassment policy should do the following:
 - State the school's commitment to prevent sexual harassment.
 - Offer examples of behaviors covered by the policy.
 - Identify the kinds of activities and sites where prohibited conduct could occur.
 - Explain the methods the school will use to investigate incidents of sexual harassment.
 - Make clear that the school will take action to stop sexual harassment from recurring.
 - Outline specific procedures to address formal complaints of sexual harassment.
 - Provide the names, positions, and contact information for people responsible for accepting and managing complaints (complaint managers).
 - Require staff and other individuals working on school grounds to report sexual harassment that they witness or learn about.
 - Prohibit retaliation against those who report harassment or participate in related proceedings.
 - Explain that confidentiality will be maintained as much as possible (for victims, bystanders, etc.) and that victims or witnesses will not be required to face harassers.
 - State that the goal of any investigation or proceedings will be a fair resolution that includes appropriate and corrective action.
- In developing a policy on sexual harassment, schools should do the following:
 - Include all categories of people affected by the policy in the development process (students, parents, faculty, staff).
 - Seek participation by all members of the school community (e.g., the school attorney, state agencies, and other individuals or agencies who know about harassment and civil rights issues).

- Make sure that individuals involved in the development of the policy receive training and have access to experts who can advise them on designing a fair and comprehensive policy.
- Thoroughly publicize the policy throughout the school and community through public posting, in discussions with students and adults, at parent-teacher organization meetings, and in languages spoken by the school population.
- Designate time and resources to implement the policy, including training for staff members.
- Align the policy with other district policies, such as written codes of conduct and personnel and student handbooks.

(See: AAUW, [Harassment-Free Hallways](#), 23, 2004; Amnesty International, [Safe Schools: Every Girl's Right](#), 2008)

- Laws related to sexual harassment in education should require that schools train students, staff, and parents about sexual harassment. Integrating sexual harassment education into school curricula is also recommended as a best practice to prevent harassment by empowering students to speak up for themselves. Several organizations provide information on how to increase awareness of sexual harassment among teachers, staff, and particularly schoolgirls.
- In Egypt, the [Egyptian Center for Women's Rights](#) ran a multi-year campaign to raise awareness about sexual harassment, including harassment of children. The group developed a [movie](#) and an educational booklet that included games to help educate children about sexual harassment without making them overly afraid. [Womankind](#), a group in the UK that involves students in developing anti-sexual bullying campaigns involves students in surveying their peers about experiences of sexual harassment. The [Canadian School Health Center](#) hosts a website with numerous lesson plans about sexual harassment for students of different ages that can be integrated into classroom teaching. The Australian Human Rights Commission has also produced a curriculum called [Tackling Sexual Harassment in Your School](#).

CASE STUDY – Costa Rica

As part of implementing its [Act No. 7476 on Sexual Harassment in the Workplace and in Education](#), Costa Rica has undertaken an extensive public awareness and education effort around harassment of adolescent girls. The National Center for Development of Women and the Family launched a Programme on Adolescent Girls which included a national survey. The survey was conducted at public, private, semi-official, and technical colleges around the country to assess knowledge about the Act and to gather data on the frequency of sexual harassment in the educational environment. The program also included a media campaign focused on prevention, punishment, and eradication of sexual harassment of young girls. Finally, the program provided training on sexual harassment prevention to counselors in secondary schools, teachers and administrative staff of secondary education centers, adolescent students from secondary schools, and university students. The government also produced specific educational materials with support from the UN and the European Union including “Say No to Sexual Harassment” and “Sexual harassment: What to do.” (See: [Combined initial, second and third periodic reports of States parties – Costa Rica, CEDAW/C/CRI/1-3.](#))

Investigation

- Laws should require that schools immediately investigate any allegation of sexual harassment. For example, under Swedish law, “[i]f an education provider becomes aware that a child, pupil or student participating in or applying for the provider’s activities considers that he or she has been subjected in connection with these activities to harassment or sexual harassment, the education provider is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future.” (See: [Discrimination Act](#), Ch. 2, sec.7)
- Investigations should be conducted confidentially and victims should be informed of the progress and outcome of the investigation. When harassment is found to have occurred, laws and policies should require that responsive measures, such as separation of the victim and the harasser, minimize the burden on the victim as much as possible. The U.S. Department of Education provides helpful guidance on best practices for sexual harassment investigations in educational settings in its publication [Protecting Students from Harassment and Hate Crime: A guide for schools](#).

Remedies

Remedies for sexual harassment of students may include special care and provisions for affected students, dismissal or other sanction for adults involved, changes in the educational setting itself, or punitive fines or criminal sentences. Many national laws make harassers individually punishable for acts of sexual harassment, whether through criminal legislation, dismissal, or civil penalties. While individual liability is critically important, making schools institutionally liable for their actions in creating a safe school is an equally important piece of preventing sexual harassment of girls and women.

Illustrative Examples

Japan:

For college and university students, sexual harassment in education and employment often overlap. In a case arising out of Tohoku University in Japan, a university professor was ordered to pay 9 million yen in compensation to a student assistant. The Sendai High Court determined that he had harassed her by demanding that she have a sexual relationship with him, and when she tried to end the relationship, he demanded that she rewrite her doctoral thesis. (See: [Prof ordered to pay 9 mil. yen for sexual harassment, Asian Economic News, July, 10, 2000](#))

United States:

In the United States, legislation prohibiting sexual harassment of students as a form of discrimination is tied to national funding of educational institutions. Any school – whether run by the government or by a private organization – that receives funding from the U.S. government must comply with Title IX. Title IX requires that schools issue a policy against sexual harassment, publicize grievance procedures, and have a Title IX coordinator. (See: U.S. Department of Education, [Sexual Harassment: It's Not Academic](#), 16, Sept. 2008) Coordinators are specially designated individuals trained to help ensure that schools are complying with the requirements of Title IX, which include but go well beyond sexual harassment prevention. Judicial interpretation of Title IX has determined that school districts can be held liable for monetary damages when students experience harassment, either from a teacher or a fellow student, when “an official with authority to end the discrimination had actual knowledge of the discrimination and failed to act such that the failure amounted to deliberate indifference.” (See: [Gebser v. Lago Vista Independent School Dist, 524 U.S. 274 \(1989\)](#); [Davis v. Monroe County Board of Educ., 526 U.S. 629 \(1999\)](#)) While this sets a high standard for liability, the potential threat of liability can alter institutional practice.

Sexual harassment in sport

- Sexual harassment in sport takes on unique dimensions because of the power relationships established with coaches and because of the necessary focus on athletes' bodies. Moreover, hazing rituals in sport can lead to sexual harassment. Recognition of sexual harassment in sport has come at the highest levels. The International Olympic Committee issued a [Consensus Statement](#) in 2007 which reported that:

sexual harassment and abuse happen in all sports and at all levels. Prevalence appears to be higher in elite sport. Members of the athlete's entourage who are in positions of power and authority appear to be the primary perpetrators. Peer athletes have also been identified as perpetrators. Males are more often reported as perpetrators than females...Research demonstrates that sexual harassment and abuse in sport seriously and negatively impact on athletes' physical and psychological health. It can result in impaired performance and lead to athlete drop-out. Clinical data indicate that psychosomatic illnesses, anxiety, depression, substance abuse, self harm and suicide are some of the serious health consequences.

- The [Windhoek Call for Action](#), adopted by the Second World Conference on Women and Sport in 1998, addresses the responsibility of all parties involved in sport to ensure "a safe and supportive environment for girls and women participating in sport at all levels by taking steps to eliminate all forms of harassment and abuse, violence and exploitation." Recognizing the problem of sexual harassment in sports, the European Parliament in 2005 adopted a resolution that urges:

Member States and sports federations to adopt measures for the prevention and elimination of sexual harassment and abuse in sport by enforcing the legislation on sexual harassment at work, to inform athletes and their parents of the risks of abuse and the means of legal action available to them, to provide sports organisations' staff with specific training and to ensure that criminal and disciplinary provisions are applied.

(See: [Resolution on Women and Sport](#), para. 40.)

- The [UNESCO Code of Sports Ethics](#) states that sports organizations have the responsibility:

To ensure that safeguards are in place within the context of an overall framework of support and protection for children, young people and women, both to protect the above groups from sexual harassment and abuse and to prevent the exploitation of children, particularly those who demonstrate precocious ability.

Core elements of laws on sexual harassment in sport

- Laws on sexual harassment should be extended to apply to sporting activities, if not already covered through general non-discrimination laws or through employment, education, or goods and services legislation.
- Laws on sexual harassment in sport should draw on the [general principles](#) for sexual harassment legislation, while taking special account of:
 - The varied environments in which women and girls participate in sport;
 - The fact that sexual harassment can be perpetrated by coaches, other athletes, or other parties involved in supporting and training athletes; and
 - The special power dynamics between athletes and coaches.

Prevention

Because of the power dynamics between coaches and athletes, as well as the high stakes for many student and professional athletes whose sporting activities are integrated with many other aspects of their lives, such as work and education, sporting organizations should take the following steps to prevent and address sexual harassment:

- Develop policies and procedures for the prevention of sexual harassment and abuse;
- Prepare and implement codes of ethics and conduct for coaches, whether they work with adults or children;
- Monitor the implementation of these policies and procedures;
- Evaluate the impact of these policies in identifying and reducing sexual harassment and abuse;
- Provide training on how sexual harassment and sexual relationships can negatively influence coach-athlete relationships;
- Develop complaint procedures that ensure privacy;
- Protect legal rights of athletes and coaches, and protect against retaliation;
- Screen all applicants for coaching staff and volunteer positions;
- Foster strong partnerships with parents/care givers in the prevention of sexual harassment and abuse;
- Promote and support scientific research on these issues;
- Foster a climate of open discussion about the issues of sexual harassment and abuse so that athletes with problems feel confident enough to speak out; and
- Develop athlete autonomy wherever possible including adopting coaching styles which give optimum autonomy and responsibility to athletes.

(See: Women's Sports Foundation, [Sexual Harassment and Sexual Relationships Between Coaches, Other Athletic Personnel and Athletes: The Foundation Position](#); International Olympic Committee, [Consensus Statement on Sexual Harassment and Abuse in Sport](#); Women Sport International, [Brochure on Sexual Harassment and Abuse in Sport](#))

PROMISING PRACTICE: The Netherlands

The national sporting organization in the Netherlands has drafted a policy plan that concentrates on ways of preventing and combating sexual harassment in sports which includes a code of conduct for professional and voluntary workers as well as a specialized telephone hotline through which people can report incidents of sexual harassment in sports. See: [Legislation in the member States of the Council of Europe in the field of violence against women vol. II](#), 145, 2002.

CASE STUDY – Targeted Protection for Children in the UK

In the UK, one of the largest children's charity organizations houses a special unit on child protection in sports. The [Child Protection in Sport Unit](#) of the National Society for the Prevention of Cruelty to Children was founded in 2001 to work with UK Sports Councils, governing bodies, and other organizations to help them reduce the risk of child abuse during sporting activities. Women Sport International, a US based non-governmental organization that has established a task force on sexual harassment, was also involved in lobbying for the establishment of this special unit. The organization maintains a [hotline specifically for children](#) to call and talk about any concerns they have about the way they are being treated during sporting activities. The group also produces a number of resources for coaches, sporting organizations, and parents that cover sexual harassment and abuse as well as many other safety topics.

Sexual harassment in housing

Sexual harassment can have severe negative impacts on the rights of women to live in safe, affordable housing. The right to choose housing also impacts other aspects of a woman's life, such as her ability to get safely to and from her place of employment, the schools her children attend, as well as access to goods and services in her neighborhood.

Core elements of sexual harassment laws in the housing/ accommodation context

- Laws related to sexual harassment in housing should:
 - Recognize sexual harassment in housing as a form of discrimination;
 - Make it unlawful to condition access to or retention of housing or housing-related services or transactions on sexual conduct or favors; and
 - Make it unlawful for a housing provider and associated employees and agents to engage in sexual or sex-based behavior that makes the housing environment offensive or significantly less desirable.
- Sexual harassment laws in this context should also follow the [general principles on sexual harassment laws](#). The Caribbean Community Secretariat has promulgated model legislation relative to sexual harassment which includes a prohibition of sexual harassment in accommodation. Specifically, the model law states:

It is unlawful for a person to make it reasonably appear to another person that

 - (1) *the terms on which the first-mentioned person offers the other person accommodation;*
 - (2) *the first-mentioned person's acceptance of the other person's application for accommodation;*
 - (3) *the time of processing of the other person's application for accommodation, or the order of precedence of the other person or any list of applicants for that accommodation;*
 - (4) *the other person's access or the extent of such access to any benefit connected with the accommodation;*
 - (5) *the failure to evict the other person or to subject that other person to any other detriment in relation to the accommodation, is or are contingent on that other person's acceptance of sexual advances or toleration of persistent sexual suggestions or innuendo from the first-mentioned person.*

(See: [CARICOM Model Legislation on Sexual Harassment](#), clause 5)

- Many countries' anti-discrimination laws also prohibit discrimination in accommodation, which include a prohibition of sexual harassment. [Benin's 2006 law](#) prohibits sexual harassment no matter where it takes place. [Ireland's](#) and [Mauritius'](#) laws prohibit any form of discrimination in accommodation, among other realms. Malta's law states that:

Persons responsible for...any establishment at which goods, services or accommodation facilities are offered to the public, shall not permit other persons who have a right to be present in, or to avail themselves of any facility, goods or service provided at that place, to suffer sexual harassment at that place.

(See: [Equality for Men and Women Act](#), Art. 9(2)(a))

Prevention

Laws should require that property owners and managers take actions to prevent sexual harassment through policy development, training, and grievance procedures. The U.S. Department of Housing and Urban Development suggests that property managers can adopt the following practices to help prevent sexual harassment:

- Develop policies against sexual harassment;
- Develop processes for people applying for housing and for tenants to report sexual harassment;
- Establish sanctions for employees, contractors, and other agents who sexually harass tenants or applicants;
- Educate employees and residents about these policies.

(See: US Dept. of Housing and Urban Development, [Policy Guidance](#), 2008)

CASE STUDY – Scotland

In Scotland, sexual harassment in the housing context is currently prohibited under the Sex Discrimination Act as well as other anti-harassment laws. The prohibition extends to landlords or anyone working for them, letting agents, estate agents, mortgage lenders, or any other service providers. Victims have a variety of avenues for redress. The Scottish housing rights group, [Shelter](#), highlights the following options for victims of harassment:

- Make a complaint to professional umbrella organizations, such as the national estate agents association, or to the employer of the harasser such as the lending company;
- Bring a complaint under the Sex Discrimination Act;
- Get advice from the Citizen's Advice Bureau;
- Make a police report;
- Take action in court with the help of a solicitor.

Scotland's Sex Discrimination Act (SDA) is monitored by the [Equality and Human Rights Commission](#) which can provide advice on cases and, when cases merit, help victims take them to court. The SDA also allows individuals who have been discriminated against to send the entity that took the discriminatory action an SDA questionnaire which asks for an explanation of the behavior. The response or lack of response to such a questionnaire often helps determine whether legal action is warranted. If a woman is experiencing harassment by a government employee in charge of housing, she also has the option to take a complaint to the Scottish Public Services Ombudsman. If a woman is being harassed by a neighbor, that activity is not covered under the Sex Discrimination Act and accordingly must be dealt with through a police report or other court action. Scottish courts can issue a non-harassment order, which will ban the harasser from continuing the harassing behavior, or an interdict, which will require a harasser to stay away from the victim, the victim's home, and/or family. Victims may also raise claims for economic damages in court. See: [Sexual Harassment](#), Shelter.

Remedies

Provisions on sexual harassment in housing, often part of anti-discrimination laws, are generally enforced through national human rights commissions or the civil courts. Moreover, NGOs are often involved in assisting and supporting victims through the process of documenting and initiating claims.

CASE STUDY – Canada

British Columbia's Human Rights Tribunal awarded a female tenant 19,422 Canadian dollars for ongoing sexual harassment by her landlord. The court found that improper gifts and comments, intrusion into the tenant's personal life, and an incident of groping constituted sexual harassment. The Court also required the landlord to pay legal expenses, damages for injury to dignity, feelings and self respect, and improper conduct during the tribunal hearing. The Court used a "knowledge" standard for the sexual harassment offense, holding him liable because he "knew or should have known" that his conduct constituted sexual harassment. (See: [MacGarvie v. Friedmann](#), 2009 BCHRT47 (Feb. 2, 2009); Carlito Pablo, [B.C. Human Rights Tribunal Favours Tenant in Sexual Harassment Case](#), Straight.com)

CASE STUDY – The United States Fair Housing Act

The United States has an extensive enforcement regime related to sexual harassment in housing under its [Fair Housing Act](#) (42 USC secs.3601-3691). The legislation prohibits sexual harassment in housing, places duties on property managers to prevent harassment, and designates an enforcement agency. The law and judicial opinions interpreting the law substantially follow the principles that have developed over time in workplace sexual harassment cases. (See: [New York v. Merlino](#), 694 F. Supp. 1101 (S.D.N.Y. 1998)) Women can file a complaint with either the federal Department of Housing and Urban Development or with a local fair housing agency and cases will be investigated at no cost to the victim. The agencies will generally attempt to negotiate a settlement but may file a claim in court if necessary. Women may also file a private suit in federal court, with their own legal representation. Moreover, many local communities have civil society groups that advocate for fair housing and will provide assistance to women who are confronted with sexual harassment. (US Dept. of Housing and Urban Development, [Policy Guidance](#), 2008) In some instances, women may also wish to file a criminal complaint, especially if they are assisted by an advocacy organization. Some police departments will assist with investigation and evidence gathering in sexual harassment cases and may even file criminal charges under state law. (Fair Housing Advocates Association, [Sexual Harassment Laws](#)) The Fair Housing Act also protects women from retaliation. The law makes it illegal for a property owner/manager to "coerce, intimidate, threaten, or...deny housing, increase rent, withhold maintenance or similar services, harass, sue, or evict because an individual filed a housing discrimination complaint, cooperated with a housing discrimination investigation, or otherwise exercised his or her legal rights under the Act." (US Dept. of Housing and Urban Development, [Policy Guidance](#), 2008) U.S. law makes this type of retaliatory action a separate basis for legal action against the property owner. Depending on the facts, property managers can be held directly liable for their behavior and vicariously liable for the acts of their employees and agents and may also be held liable for the harassing behavior of tenants in some cases. (US Dept. of Housing and Urban Development, [Policy Guidance](#), 2008.)

Legislation prohibiting the sexual harassment of women and girls in the course of accessing goods and services is also an important area to consider for legislation. The European Union has been proactive in this regard, through the issuance of [Directive 2004/113/EC](#), implementing the principle of equal treatment between men and women in the access to and supply of goods and services. This directive specifies that sexual harassment in the provision of goods and services is a form of prohibited discrimination.

Core elements of laws on sexual harassment in provision of goods and services

The European Union directive covers many of the key areas that should be included in legislation, including:

- Ensuring that judicial and/or administrative procedures are in place to enforce the prohibition on discrimination/harassment;
- Provision for effective, proportionate compensation and/or reparation related to damages and losses suffered as a result of the harassment and provision for dissuasive penalties for perpetrators;
- Placing the burden of proof in civil proceedings on the alleged perpetrator;
- Protections against retaliation;
- Provision for dialogue with key stakeholders;
- Ensuring that a designated governmental body has oversight of the issue and has the power to provide assistance to victims, to collect data, and to publish appropriate reports on the topic; and
- Ensuring that the prohibition of sexual harassment applies to both public and private interactions involving the provision of goods and services.

Models and examples for drafting specific provisions on each of the above principles can be adapted from laws in the [employment](#) or [anti-discrimination](#) law context.

Defining goods & services

- Laws should provide a specific and broad definition of goods and services.
 - Northern Ireland's law provides an example:
(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman who seeks to obtain or use those goods, facilities or services—
 - (a) by refusing or deliberately omitting to provide her with any of them, or*
 - (b) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in his case in relation to male members of the public or (where she belongs to a section of the public) to male members of that section.*

(2) *The following are examples of the facilities and services mentioned in paragraph (1)—*

(a) *access to and use of any place which members of the public or a section of the public are permitted to enter;*

(b) *accommodation in a hotel, boarding house or other similar establishment;*

(c) *facilities by way of banking or insurance or for grants, loans, credit or finance;*

(d) *facilities for education;*

(e) *facilities for entertainment, recreation or refreshment;*

(f) *facilities for transport or travel;*

(g) *the services of any profession or trade, or any local or other public authority.*

(See: [Sex Discrimination Order](#), sec. 30)

- Legislation in New South Wales, Australia also provides a detailed definition of what constitutes services, including:

(a) [services](#) relating to banking, insurance and the provision of grants, loans, credit or finance, (b) [services](#) relating to entertainment, recreation or refreshment, (c) [services](#) relating to transport or travel, (d) [services](#) of any profession or trade, (e) [services](#) provided by a [council](#) or public [authority](#), (f) [services](#) consisting of access to, and the use of any facilities in, any place or [vehicle](#) that the public or a section of the public is entitled or allowed to enter or use, for payment or not. (See: [Anti-Discrimination Act](#), sec. 4)

CASE STUDY – Austria

In Austria, sexual harassment in the provision of goods and services is addressed in the national Equal Treatment Act, but compliance with the European directive also required some amendment to national laws relative to the provision of insurance, highlighting again the importance of reviewing a wide array of national laws so as to ensure comprehensive protection against harassment. Individuals who have experienced sexual harassment in the provision of goods or services can “file an application with the Equal Treatment Commission to examine the case and deliver an expert opinion on the case [and] whether or not the law has been violated.” Cases of sexual harassment in the provision of goods and services are rarely reported, even in Europe, where a supportive enforcement regime exists. But in Austria an Equal Treatment Ombudsperson can report on cases and provide expert advice to complainants. In one instance, an electrician who was called out to a family home to do repair work reportedly harassed the daughter of the family during the course of the work. The parents sought advice from the Equal Treatment Ombudsman who consulted with the family. The situation ultimately was resolved with an apology and an offer of compensation from the service provider without the need for formal procedures. (See: European Network of Legal Experts in the Field of Gender Equality, [Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC](#), 9, 28-29, 2009)

Humanitarian relief and peacekeeping operations

- One main area of concern related to sexual harassment in the provision of goods and services is in the humanitarian and peacekeeping realms. Sexual exploitation of some of the world's most vulnerable populations has raised an international outcry and has become an important area of advocacy for international NGOs and intergovernmental organizations.
- In 2002, a report from UNHCR and Save The Children – UK brought the issue of sexual exploitation and abuse of children by peacekeepers and humanitarian workers to the forefront of international attention. The report implicated 42 aid agencies, including the UNHCR, as being involved in sexual exploitation of women and children. UN peacekeepers were also implicated.

Agency workers from local and international NGOs as well as UN agencies are among the prime sexual exploiters of refugee children often using the very humanitarian assistance and services intended to benefit refugees as a tool of exploitation. Male national staff were reported to trade humanitarian commodities and services, including medication, oil, bulgur wheat, plastic sheeting, education courses, skills-training, school supplies etc., in exchange for sex with girls under 18. The practice appeared particularly pronounced in locations with significant and established aid programmes.

(See: UNHCR/Save The Children–UK, [Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia Guinea and Sierra Leone](#), 8, 2002.)

- The report cited lack of effective complaint mechanisms, inadequate codes of conduct and training for staff, as well as inadequate local laws to hold perpetrators accountable. The problem of sexual exploitation and abuse by humanitarian workers and peacekeepers has been documented elsewhere in Africa and around the world. See: Humanitarian Exchange Network, [‘It is difficult to escape what is linked to survival’: sexual exploitation and food distribution in Burundi](#), 2006; Human Rights Watch, [Trapped by Inequality](#), sec. V, 2003; UN Organization Mission in the Democratic Republic of Congo, [Sexual Exploitation and Abuse End of Assignment Report](#), 2005.

Basic principles for laws on sexual exploitation and abuse

National laws should:

- Require that non-governmental organizations operating in the country have a sexual exploitation policy and that their staff are trained on prevention of sexual exploitation;
- Include criminal penalties for sexual exploitation of women and children; and
- Provide for a national body to receive and investigate complaints of sexual exploitation.

(See also [Sexual Assault, Trafficking, and Forced/Early Marriage](#) sections)

- In reality, however, much sexual exploitation and abuse occurs when national legal protections, if they exist, have entirely broken down. Accordingly, it is the primary responsibility of the nations and international organizations providing assistance to ensure that their employees carry out the mission of humanitarian assistance while at the same time effectively protecting the rights of women and girls. For example, Sweden's law prohibiting the purchase of sexual services extends to peacekeeping forces stationed abroad. Three military officers stationed abroad were charged and convicted under the law in 2002, and were subsequently dismissed from the military. Gunilla Ekberg, [The Swedish Law that Prohibits the Purchase of Sexual Services](#), 10 Violence Against Women 1187, 1198 (2004).

United Nations Action to Combat Sexual Exploitation and Abuse

- The issue of sexual exploitation in humanitarian and peacekeeping operations has been on the United Nations agenda at the highest levels. [Security Council Resolution 1325](#) on Women, Peace and Security:

Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

...

Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolution 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000.

- In 2002 in response to the UNHCR/SCUK report, the UN Inter-Agency Standing Committee, which is the primary mechanism for inter-agency coordination of humanitarian assistance by UN and non-UN organizations, established a Task Force on Sexual Exploitation and Abuse in Humanitarian Crises. On June 13, 2002, the IASC released its report on [Protection from Sexual Exploitation and Abuse in Humanitarian Crises in response to allegations of abuse in West Africa](#). Adopting recommendations from the report, in 2003, the Secretary General issued a bulletin on [Special measures for protection from sexual exploitation and sexual abuse \(ST/SGB/2003/13\)](#), which applies to all staff of the UN, including separately administered organs and programs. The bulletin states that:

(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;

(b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;

(c) Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes any exchange of assistance that is due to beneficiaries of

assistance;

(d) Sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;

(e) Where a United Nations staff member develops concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, he or she must report such concerns via established reporting mechanisms;

(f) United Nations staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers at all levels have a particular responsibility to support and develop systems that maintain this environment.

- In 2006, the UN held a high-level conference on eliminating sexual exploitation and abuse, which resulted in a [Statement of Commitment](#) that included the following action points:
 1. *Develop organization-specific strategies to prevent and respond to sexual exploitation and abuse. These would include time-bound, measurable indicators of progress to enable our organizations and others to monitor our performance.*
 2. *Incorporate our standards on sexual exploitation and abuse in induction materials and training courses for our personnel.*
 3. *Prevent perpetrators of sexual exploitation and abuse from being (re-)hired or (re) deployed. This could include use of background and criminal reference checks.*
 4. *Ensure that complaint mechanisms for reporting sexual exploitation and abuse are accessible and that focal points for receiving complaints understand how to discharge their duties.*
 5. *Take appropriate action to the best of our abilities to protect persons from retaliation where allegations of sexual exploitation and abuse are reported involving our personnel.*
 6. *Investigate allegations of sexual exploitation and abuse in a timely and professional manner. This includes the use of appropriate interviewing practice with complainants and witnesses, particularly with children.*
 7. *Take swift and appropriate action against our personnel who commit sexual exploitation and abuse. This may include administrative or disciplinary action, and/or referral to the relevant authorities for appropriate action, including criminal prosecution.*
 8. *Provide basic emergency assistance to complainants of sexual exploitation and abuse.*
 9. *Regularly inform our personnel and communities on measures taken to prevent and respond to sexual exploitation and abuse. Such information should be developed and disseminated in-country in cooperation with other relevant agencies and should include details on complaints mechanisms, the status and outcome of investigations in general terms, feedback on actions taken against perpetrators and*

follow-up measures taken as well as assistance available to complainants and victims.

10. Engage the support of communities and governments to prevent and respond to sexual exploitation and abuse by our personnel.

- Twenty-two UN and 24 non-UN entities endorsed the statement. Despite these efforts, concerns about sexual exploitation and abuse remain. (See: U.S. General Accounting Office, [Humanitarian Assistance: Protecting Refugee Women and Girls Remains a Significant Challenge](#), 2003; Humanitarian Exchange Magazine, [The West Africa sex scandal](#), 2003)

Codes of conduct, training, and prevention

- Several UN and non-UN entities have established codes of conduct on sexual exploitation and abuse. The code of conduct for “Blue Helmets”, as UN Peacekeepers are known, specifically prohibits sexual exploitation of women and girls. (See: [Ten Rules: Code of Personal Conduct for Blue Helmets](#), 1998) Non-UN entities also have codes of conduct regulating their employees. For example, [War Child](#)’s code reflects the Secretary General’s Bulletin. The [SPHERE](#) humanitarian charter and minimum standards for disaster response, also include prohibitions of sexual exploitation.
- Training on sexual exploitation is becoming more widespread. Materials developed for use in Sierra Leone have been widely used throughout UN agencies and in other parts of the world. (See: Coordination Committee for the prevention of Sexual Exploitation and Abuse (CCSEA), [Understanding Humanitarian Aid Worker Responsibilities: Sexual Exploitation and Abuse Prevention](#)) The International Council of Voluntary Agencies has also developed a training handbook specifically on receiving and investigating complaints of sexual exploitation and abuse. (See: ICVA, [Building Safer Organizations Handbook](#)) Finally, UNHCR has developed an extensive set of guidelines related to prevention and response to gender-related violence against refugee and IDP women and girls which includes broad-based strategies for prevention of gender-based violence, including sexual exploitation and abuse. (See: UNHCR, [Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response](#))
- The United Nations has promulgated model investigation procedures as well as adopting a policy for support to victims. In May 2004, all civilian personnel were required to adopt documents promulgated by the Inter-Agency Task Force including an information sheet for local communities, a complaint referral form, and training scenarios. (See: [Final Report of the IASC Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises](#), para. 14, 2004)
- The UN policy on assistance establishes that both complainants (those whose allegations are under investigation) and victims (those whose allegations of sexual exploitation have been documented) are entitled to assistance, as are

children who are born as a result of sexual exploitation and abuse. (See: [Report of the Ad Hoc Open-ended Working Group on Assistance and Support to Victims of Sexual Exploitation and Abuse](#), UN Doc. A/62/595, 2005)

Criminal law

- Some countries have criminalized certain forms of sexual harassment. Criminal legislation has been directed particularly at quid pro quo harassment and harassment that results in some form of sexual assault. Clearly rape and assault are appropriate subjects of criminal law. (See also Criminal Law in [Domestic Violence](#) and [Sexual Assault](#) sections)
- Criminal laws against sexual harassment should:
 - Provide dissuasive penalties for perpetrators;
 - Minimize barriers to victims coming forward to report cases;
 - Include provision and funding for victim support services;
 - Include provisions to require and fund training of police, prosecutors, and judges; and
 - Require data collection and regular reporting on cases of sexual harassment.

Workplace sexual harassment as a crime

Some countries have criminalized sexual harassment in the workplace or have legislation that is considered to apply to workplace harassment. There are potential disadvantages to this approach particularly if it is the only available redress for sexual harassment. Criminal cases usually require a higher standard of proof than civil cases. In addition, women may be unwilling to report harassment when it is made a criminal offense, because, although they want the harassment to stop, they do not want to subject the harasser to criminal prosecution. Finally, criminalizing sexual harassment may limit a victim's ability to recover damages, because an employer usually will not be liable for an employee's criminal conduct. Despite these disadvantages, criminal prohibitions of sexual harassment may have a deterrent effect on employers and employees who contemplate committing acts of sexual harassment.

Example – China

China amended its laws in 2005 to provide additional protection to victims of sexual harassment at work. (See: [Law of the People's Republic of China on the Protection of Rights and Interests of Women](#), ch. 8) In 2008, a woman in Sichuan Province became the first to win a criminal case related to sexual harassment under the new laws. Her harasser was sentenced to five months in jail. (See: Megan Shank, [No Longer Silent, Ms. Magazine](#), 2009)

CASE STUDY – France

Legislation in France provides that “The harassment of another person for the purpose of obtaining favours of a sexual nature is punished by one year’s imprisonment and a fine of € 15,000.” (See: [Code Pénal](#), Art. 222-33) The law also provides that “Harassing another person by repeated conduct which is designed to or which leads to a deterioration of his conditions of work liable to harm his rights and his dignity, to damage his physical or mental health or compromise his career prospects is punished by a fine of € 15,000.” (See: [Code Pénal](#), Art. 222-33-2) The Paris-based [Association européenne contre les Violences faites aux Femmes au Travail](#) (AVFT, European Association Against Workplace Violence Against Women) has been carrying out a campaign to hold accountable elected officials who commit workplace sexual harassment. In June 2009, a local mayor who had made sexual comments and grabbed the buttocks of and tried to kiss female employees was sentenced to six months imprisonment, and was fined. In July 2009, another local mayor was given a sentence of four months imprisonment but the sentence was converted to a fine on appeal. (See: AVFT, [Campagne contre les violences sexuelles et sexistes commises par les élus](#))

Public sexual harassment

Harassment of women in public places, such as streets and transport systems, remains a serious problem in many nations. Known as “eve-teasing” or street harassment, public harassment can be an issue in any country. To combat this type of harassment, which generally includes unwelcome sexual advances and physical contact, criminal codes should make such conduct a crime. (See: [Report of the UN Special Rapporteur on Violence Against Women](#), para. 48, 2003)

CASE STUDY – Egypt

In 2008, for the first time Egypt convicted a man for publicly groping and harassing a woman. According to reports, as many as 83% of Egyptian women experience sexual harassment. The victim in the Egyptian case, a 26 year old filmmaker, was required to bring both her attacker and her father to the police station before police would allow her to file assault charges. The perpetrator was convicted and sentenced to three years’ hard labor and fined 5,001 Egyptian pounds (US\$895). This and other high profile incidents have led the Egyptian government to consider new legislation related to sexual harassment. (See: [Egypt’s sexual harassment ‘cancer’](#), BBC News Online, July 18, 2008; [Egypt moves closer to passing sexual harassment law](#), Reuters, Feb. 17, 2010) The Egyptian government has also recently initiated a campaign to use religion in order to combat harassment. The government distributed a booklet to 50,000 imams across Egypt to raise awareness of the problem and to suggest strategies for imams to tackle the issue. (See: [In Egypt, Invoking Islam to Combat Sexual Harassment](#), Time, July 10, 2009)

Policy solutions (See also the [Safe Cities](#) Module)

- In many countries public harassment can technically be prosecuted under criminal indecency and assault laws but the problem of public harassment can be difficult to control through the criminal law. In Japan for example, public harassment is illegal under [Article 176 of the Penal Code](#) but a 2004 study reported that more than 60% of Japanese women between the ages of 20 and 30 had been subjected to unwanted sexual touching in the public transit system. (See: [Japan Tries Women-Only Train Cars to Stop Groping](#), ABC News Online, June 10, 2005) In India, Japan, Mexico and elsewhere the problem has been so severe that governments have opted for a policy solution and provided separate accommodation for the sexes on public transit systems.
- Grassroots organizations in the UK and US have started public campaigns to raise awareness about street harassment of women. Often web-based, these campaigns allow users to share their stories and provide strategies for confronting and reporting public harassment. [Stop Street Harassment](#) and [The Street Harassment Project](#) are two examples of these types of campaigns.

Sample laws

The following excerpts of laws from around the world demonstrate the varied ways in which sexual harassment in the workplace has been criminalized.

- The Penal Code in Algeria defines sexual harassment as abusing the authority conferred by one's function or profession in order to give orders to, threaten, impose constraints or exercise pressure on another person for the purpose of obtaining sexual favors. A person convicted of this offence is subject to imprisonment of two months to one year and a fine of 50,000 to 100,000 dinars. See: UN Secretary-General's database on violence against women, [Law No. 04-15 amending the Penal Code to create the offence of sexual harassment; article 341 bis Criminal Code](#).
- The Hungarian Criminal Code (Articles 174, 180, 197, 198 of the 4th Act of 1978) prohibits the "constraint" of a person "with violence or menace to do, not to do, or to endure something" where this "causes a considerable injury of interest." It also prohibits the use of "an expression suitable for impairing honour or commits another act of such a type, a) in connection with the job, performance of public mandate or in connection with the activity of public concern of the injured party, b) before a great publicity." (See: [Sexual Harassment in the Workplace in EU Member States](#), p.22, 2004)
- Kenya's [Sexual Offences Act](#), passed in 2006, states in sec. 23 that any:
person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual

harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both.

- The Criminal Code in Lithuania states that:

A person who, in seeking sexual contact or satisfaction, harasses a person subordinate to him in office or otherwise by vulgar or comparable actions or by making offers or hints shall be considered to have committed a misdemeanour and shall be punished by a fine or by restriction of liberty or by arrest. 2. A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request. (See: [Criminal Code](#), Art.152.)

- Philippine law provides that sexual harassment is committed in a work-related or employment environment when, among other instances: The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee. The penalty for this crime ranges includes a term of imprisonment of one to six months and/or a fine of 10,000 to 20,000 pesos. (See: [Republic Act No. 7877](#), sec. 7)

- And finally, in Spain:

Whoever seeks favours of a sexual nature for him/herself or for a third party in the context of an ongoing or steady occupational or educational relationship or one involving the provision of services and with such behaviour objectively and seriously intimidates or places the victim in a hostile or humiliating situation shall be punished as a perpetrator of sexual harassment and punished with three to five months imprisonment or six to ten months fine. The penalty is harsher if the perpetrator in committing sexual harassment avails him/herself of a higher occupational educational or hierarchical rank or expressly or tacitly avows to jeopardise the victims legitimate expectations within the scope of such relationship in this case the penalty is 5 to 7 months imprisonment or 10 to 14 months fine or when the victim is particularly vulnerable for reasons of age, illness or personal situation in which case the penalty is up to 7 months imprisonment or 10 to 14 months fine or up to 6 months to 1 year imprisonment when in such cases the perpetrator commits the illicit act from a position of superiority as described above.

(See: [Penal Code](#), Art. 184 – Const. Act 10/1995 of 23 November)

Resources

- American Association of University Women, *Harassment-Free Hallways: How to Stop Sexual Harassment in School*, 2004; available in [English](#).
- Amnesty International, *Safe Schools: Every Girl's Right* (2008); available in [English](#).
- Alliance Against Sexual Harassment (Pakistan), *The Code of Conduct for Gender Justice at the Workplace*; available in [English](#).
- Canadian School Health Center, *Table of lesson plans and learning activities*; available in [English](#) and [French](#)
- Caribbean Community (CARICOM), *Model Law on Sexual Harassment*; available in [English](#).
- Council of Europe, *Legislation in the member States of the Council of Europe in the field of violence against women*; available in [English](#) ([vol I](#) and [vol II](#)) and [French](#).
- European Network of Legal Experts in the Field of Gender Equality, *Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC*; available in [English](#).
- International Concil of Voluntary Agencies (ICVA), *Building Safer Organizations Handbook*; available in [English](#).
- International Labour Organization, *Sexual Harassment at Work: National and international responses*; available in [English](#).
- International Olympic Committee, *Consensus Statement on Sexual Harassment and Abuse in Sport*; available in [English](#).
- Ireland Presidency of the European Union, *Sexual Harassment in the Workplace in EU Member States*; available in [English](#).
- International Trade Union Confederation, *Stopping Sexual Harassment at Work: A Trade Union Guide* (2008) ; available in [English](#).
- National Center for Lesbian Rights, *Guidance for Drafting State Safe Schools Legislation*; available in [English](#).
- Second World Conference on Women and Sport, *Windhoek Call to Action*; available in [English](#).
- The Advocates for Human Rights, *Sexual Harassment, StopVAW*; available in [English](#).

- U.S. Department of Education, *Protecting Students from Harassment and Hate Crime: A guide for schools*; available in [English](#).
- U.S. Department of Education, *Sexual Harassment: It's Not Academic*; available in [English](#).
- UNESCO, *Code of Sports Ethics*; available in [English](#).
- United Nations, *Handbook for legislation on violence against women*; available in [English](#).
- United Nations, *Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and non-UN Personnel*; available in [English](#).
- USAID Women's Legal Rights Initiative, *Annual Report on Good Practices, Lessons Learned, and Success Stories* (2006); available in [English](#).
- Women's Legal Centre, *Sexual Harassment and the Amended Code of Good Practice on the Handling of Sexual Harassment in South Africa*, (2006); available in [English](#).
- Women Sport International, [*Brochure on Sexual Harassment and Abuse in Sport*](#); available in [English](#).

Sex Trafficking

Throughout this knowledge asset, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a promising practice.

Some of the laws cited herein may contain provisions which authorize the death penalty. In light of the United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

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Overview

- The focus of this section of the [Legislation Programming Module](#) of the [Virtual Knowledge Centre to End Violence Against Women and Girls](#) is on the trafficking of women and girls for the purpose of sexual exploitation, otherwise known as sex trafficking. However, the authors recognize that sex trafficking may and often does overlap with other forms of human trafficking. For example, an individual may initially be trafficked into forced labor as a domestic worker or caregiver, but later sold into prostitution. According to the [International Centre for Criminal Law Reform and Criminal Justice Policy](#), reviews of the Live-in Caregiver Programme in Canada are underway because of concern that foreign migrants are vulnerable to exploitation. Studies such as this one may reveal needed information about the extent of exploitation and areas of overlap and intersection between the forms of human trafficking.
- The forms of human trafficking or modern-day slavery articulated by the [United Nations Working Group on Contemporary Forms of Slavery](#) are:
 - Sale of children
 - Child prostitution
 - Child pornography
 - Child labour
 - Sex tourism
 - Use of children in armed forces
 - Exploitation of migrant workers
 - Illegal adoption
 - Trafficking in persons
 - Trafficking in human organs
 - Exploitation of prostitution of others
 - Violence against women
 - Forced marriage
 - Debt bondage
 - Forced labour
- See: United Nations Office on Drugs and Crime, *Combating Trafficking In Persons: A Handbook for Parliamentarians*, 18, 2009; available in [English](#).
- The above forms of human trafficking are not mutually exclusive. Various groups have attempted to quantify the numbers of individuals exploited in these various forms. The International Labor Organization (ILO) estimates that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time. Of these victims, the ILO estimates that at least 1.39 million are victims of commercial sexual servitude, both transnational and within countries. This data suggests that trafficking for forced labor is more prevalent than trafficking for sexual exploitation. At the same time, the ILO estimates that 56 percent of all forced labor victims are women and girls. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 2009)

Core elements of legislation on sex trafficking of women and girls

- A definition of sex trafficking which focuses on the criminal acts of the offender rather than on the state of mind of the victim including:
 - A provision which states that the consent of the trafficking victim is not a defense to the criminal offence of sex trafficking; and
 - A provision which states that a trafficking victim shall not be detained, arrested or charged with a criminal offence for the activities they are involved in as a direct consequence of their situation as a trafficked person; and
- A criminal offence for the offence of sex trafficking involving:
 - Recruitment, receipt, enticement, harboring, obtaining, providing, transferring, or transportation of persons;
 - By any means (recognizing that no one can consent to being trafficked for the purpose of sexual exploitation); **OR**
 - By one of the following means to achieve the consent of a person having control over another person, for the purpose of exploitation (except where the trafficking victims are under age 18):
 - The threat or use of force; or
 - Other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability; or
 - The giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
 - The facilitating or controlling a victim's access to an addictive controlled substance; or
 - The unlawful conduct related to documents in furtherance of labor or sex trafficking; **AND**
 - For the purpose of sexual exploitation, which must include at a minimum, the exploitation of the prostitution of others.
- A criminal offence for:
 - Attempting to commit an offence mentioned above;
 - Participating as an accomplice to an offence mentioned above; and
 - Organizing or directing other persons to commit an offence mentioned above.
- Enhanced criminal penalties for a the commercial sexual exploitation of another where the offender:
 - Has committed a prior qualified human trafficking-related offence, which should include labor trafficking, sex trafficking, prostitution of another, or unlawful conduct related to documents in furtherance of labor or sex trafficking; or

- The offence involved a sex trafficking victim who suffered bodily harm during the commission of the offence; or
- The time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or
- The offence involved more than one sex trafficking victim; and
- Protections for victims and witnesses, including:
 - Basic benefits and services;
 - Protection of a victim's identity and/or privacy;
 - Protection in court proceedings;
 - Protection from summary deportation and permission to remain legally in the receiving state or the safe and timely return of a the victim to the state of which that individual is a national or has a permanent right of residence;
 - Compensation; and
 - The right to file a civil claim for damages; and
- Civil Remedies, including:
 - Restitution; and
 - Asset forfeiture; and
 - Civil damages; and
- Special Protection and assistance for child victims, including:
 - Treatment of a victim as a child and to the extent possible where the age is uncertain and until age is verified;
 - Appointment of a guardian to advocate for the best interests of the child and to accompany the child through the process ensuring that:
 - Direct contact between the child and perpetrator is avoided;
 - The child victim is fully informed about the criminal and security procedures;
 - The child may make an informed decision whether to testify in criminal proceedings ensuring that children who testify are kept safe;
 - Appropriate shelter is provided based upon the child's age and special needs;
 - Individuals responsible for the care of child victims are adequately trained; and
 - Adoption of clear policies and procedures for the return and repatriation of child victims taking into account the best interests of the child and the capacity of the receiving state to provide long-term assistance;

- Adoption of clear policies and procedures for the extradition of individuals for the offence of sex trafficking or when extradition does not take place, the prosecution of nationals for sex trafficking offences committed abroad; and
- Government investment in protection, prosecution, prevention and partnerships, including:
 - Permanent funding for victim services;
 - A statewide or national human trafficking interagency task force;
 - Ongoing and regular reporting on the number and nature of sex trafficking investigations, arrests, charges, and convictions; and
 - Funding for training of law enforcement, prosecutors, judges and other criminal justice system professionals; and
 - Funding for public awareness campaigns.
- According to the United Nations Inter-Agency Project on Human Trafficking, 61 countries have passed national laws with human trafficking as their focus. (See: [International Trafficking in Persons Laws, UNIAP](#))

Sources of international law

These international statements of law and principle provide a foundation for the right to be free from involuntary servitude and slavery of which sex trafficking is one form.

- The [United Nations Inter-Agency Project on Human Trafficking](#) has an online resource center where it publishes [key international laws and agreements](#), many of which are mentioned here.

United Nations treaties and conventions

- 1904 International Agreement for the Suppression of the White Slave Traffic, League of Nations, Treaty Series, vol. 1, p. 83
- 1910 International Convention for the Suppression of the White Slave Traffic, League of Nations, Treaty Series, vol. VIII, p. 278
- 1921 International Convention for the Suppression of the Traffic in Women and Children, League of Nations, Treaty Series, vol. IX, p. 415
- 1926 [Slavery Convention](#), United Nations, *Treaty Series*, vol. 212, No. 2861
- 1930 [Convention concerning Forced or Compulsory Labour](#), International Labour Organization Convention No. 29
- 1933 International Convention for the Suppression of the Traffic in Women of Full Age, League of Nations, Treaty Series, vol. CL, p. 431

- 1947 Protocol to amend the 1921 Convention for the Suppression of the Traffic in Women and Children and the 1933 Convention for the Suppression of the Traffic in Women of Full Age United Nations, *Treaty Series*, vol. 53, No. 770 (See also the 1921 International Convention for the Suppression of the Traffic in Women and Children, as amended by the 1947 Protocol (United Nations, *Treaty Series*, vol. 53, No. 771) and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, as amended by the 1947 Protocol (United Nations, *Treaty Series*, vol. 53, No. 772))
- 1948 [Universal Declaration of Human Rights](#) General Assembly resolution 217 A (III).
- 1949 Protocol amending the 1904 International Agreement for the Suppression of the White Slave Traffic, and the 1910 International Convention for the Suppression of the White Slave Traffic, United Nations, *Treaty Series*, vol. 30, No. 446 (See also the 1904 International Agreement for the Suppression of the White Slave Traffic, as amended by the 1949 Protocol (United Nations, *Treaty Series*, vol. 92, No. 1257) and the 1910 International Convention for the Suppression of the White Slave Traffic as amended by the 1949 Protocol (United Nations, *Treaty Series*, vol. 98, No. 1358))
- 1950 [Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others](#), United Nations, *Treaty Series*, vol. 96, No. 1342.
- 1953 [Protocol amending the Slavery Convention](#), United Nations, *Treaty Series*, vol. 182, No. 2422.
- 1956 [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#), United Nations, *Treaty Series*, vol. 266, No. 3822.
- 1957 [Convention Concerning the Abolition of Forced Labour](#) (ILO Convention No 105) obliges State Parties to prohibit the use of any form of forced or compulsory labour
- 1966 [International Covenant on Civil and Political Rights](#), United Nations, *Treaty Series*, vol. 999, No. 14668 p. 171
- 1973 [Convention Concerning the Minimum Age for Admission to Employment](#) (ILO Convention No 138) obliges State Parties to fix a minimum age for employment, not less than the age for completing compulsory schooling and, in any event, not less than 15 years. Developing countries may set the minimum age at 14.
- 1979 [Convention on the Elimination of All Forms of Discrimination against Women](#), United Nations, *Treaty Series*, vol. 1249, No. 20378.
- 1989 [Convention on the Rights of the Child](#), United Nations, *Treaty Series*, vol. 1577, No. 27531
- 1998 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No 182) obliges

State Parties to prohibit and eliminate worst forms of child labour. “Worst forms of child labour” includes the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.

- [2000 United Nations Convention Against Transnational Organized Crime](#), G.A. Res. 25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (Vol. I), including the [2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children](#), supplementing the United Nations Convention against Transnational Organized Crime.
- 2000 [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#), General Assembly resolution 54/263, annex II.
- Additional information about the United Nations response to trafficking in women and girls may be found in the [report of the Expert Group Meeting on “Trafficking in women and girls”](#) held 18-22 November 2002.

United Nations General Recommendations and other international instruments

- In, [General Recommendation 19](#), Paragraph 6(1), 1992, the Committee on the Elimination of Discrimination Against Women stated that “States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.”
- The [Beijing Platform for Action](#), Article 113(b), 1995 defined trafficking in women and forced prostitution as a form of violence against women.
- The General Assembly, the Economic and Social Council, the Commission on Human Rights and the Commission on the Status of Women have all passed resolutions on trafficking. None of these resolutions, however, define trafficking. They include: General Assembly resolution 50/167 of 22 December 1995; Commission on Human Rights resolution 1995/25 of 3 March 1995; Commission on the Status of Women resolutions 39/6 of 29 March 1995 and 40/4 of 22 March 1996; Commission on Human Rights resolution 1996/24 of 19 April 1996; Commission on Human Rights resolution 1997/19 of 11 April 1997, adopted without vote; Economic and Social Council resolution 1998/20 of 28 July 1998; Commission on Human Rights resolutions 1998/30 of 17 April 1998 and 1999/40 of 26 April 1999; General Assembly resolution 57/176 of 30 January 2003; General Assembly resolution 58/137 of 4 February 2004; General Assembly resolution 61/144 of 1 February 2007; General Assembly resolution 63/194 of 23 January 2009; General Assembly resolution 63/156 of 30 January 2009; Human Rights Council resolution 11/3 of 17 June 2009. (See: [Report of the UN Special Rapporteur on Violence Against Women on trafficking in women, women’s migration and violence against women](#), 29 February 2000)

Regional laws and agreements

The [United Nations Inter-Agency Project on Human Trafficking](#) has an online resource center where it publishes [regional laws and agreements](#), many of which are mentioned here.

Africa

- [1982 African \[Banjul\] Charter on Human and Peoples' Rights](#), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)
- [1990 African Charter on the Rights and Welfare of the Child](#), OAU Doc. CAB/LEG/24.9/49 (1990). Articles 27 and 29 pertain to the use of children in prostitution and the sale of or traffick in children.
- 2003 [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#), Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005. Article 4(g) obligates state parties to take appropriate and effective measures to “prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.”
- [2001 ECOWAS Declaration and Plan of Action Against Trafficking in Persons](#)

Americas

- [1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women \(Convention of Belém do Pará\)](#)
- [1994 Inter-American Convention on International Traffic in Minors](#)

Europe

- [1953 European Convention for the Protection of Human Rights and Fundamental Freedoms](#)
- [1996 European Convention on the Exercise of Children's Rights](#)
- [2000 Charter of Fundamental Rights of the European Union](#)
- [2002 Council of the European Union Legal Framework Against Trafficking](#)
- [2005 Council of Europe Convention on Action against Trafficking in Human Beings](#)
- [2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#)

Asia

- [1997 Association of South East Asian Nations \(ASEAN\) Declaration on Transnational Crime](#)
- Asian countries have formed the [ASEAN National Human Rights Institutions Forum](#) and the [Asia Pacific Forum of National Human Rights Institutions](#) to encourage cooperation, training, capacity building, and the promotion and protection of human rights. The [Asian Regional Trafficking in Persons Project](#), an

initiative of the Australian government, began in 2005 and focuses on promoting and protecting trafficking victims' rights and holding sex traffickers accountable.

Drafting the legislative preamble

- Drafters should ensure the legislative preamble to a state's anti-trafficking legal framework clearly states the following core principles:
 - [Sex trafficking is a grave violation of human rights and a form of violence against women and girls;](#)
 - [Sex trafficking may occur whether or not an international, national or regional border is crossed;](#)
 - [Sex trafficking may involve foreign nationals, citizens, and legal permanent residents of a particular country;](#)
 - [Sex trafficking must be addressed by national and local governments through effective prosecution, protection, prevention and partnerships.](#)These efforts must be infused with principles of:
 - [Non-discrimination toward all trafficking victims,](#) and
 - [Fair and equal treatment of all trafficking victims, including child victims.](#)

(See: [UNODC Model Law Against Trafficking in Persons](#) preamble, paragraph 4, 2009 for list of international obligations with which states must comply to protect human rights and prevent trafficking; [Convention of Belém do Pará](#), Article 2(b), which states that trafficking in persons is physical, sexual and psychological violence against women; [Council of Europe Convention Against Trafficking in Human Beings](#) Preamble, 2005 which states “Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being; Considering that trafficking in human beings may result in slavery for victims...”; UNHCR [Guidelines on Gender-Related Persecution and Resolution 2005/41, Elimination of violence against Women, 57th meeting, 19 April 2005](#), paragraph 2, which states that sex trafficking is gender-based violence)

- The rationale described in the following section provides the legal standards a drafter may need to use in persuading government officials, members of parliament and others for each of the core principles in the legislative preamble.

Sex trafficking is a grave violation of human rights and a form of violence against women and children

- Sex trafficking violates women's right to life, liberty and security of person. The fundamental individual right to life, liberty and security of person is reflected in Article 3 of the [Universal Declaration of Human Rights](#) (UDHR) and Article 6 of the [International Covenant on Civil and Political Rights](#) (ICCPR).
- [The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women \(Convention of Belém do Pará\)](#), Chapter II, Article 3

provides for the right of women to be free from violence within both the public and private spheres, specifically listing “trafficking in persons” as a form of violence against women regardless of whether it involves the knowledge or acquiescence of state agents.

- Sex trafficking is often referred to as modern-day slavery. Many countries have ratified various international conventions that create obligations to prohibit slavery and slavery-like practices. While some sex trafficking situations may not involve the permanent ownership historically associated with slavery, they can involve exploitation and deprivations of liberty that render the situation tantamount to slavery. Slavery-like practices that can manifest in sex trafficking situations, including servitude, forced labor, debt bondage, and forced marriages, are also prohibited.
- Some acts of sex trafficking involve conduct that can be understood as a form of torture, inhuman or degrading treatment, which is prohibited under the [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT), Article 5 of the [UDHR](#) and Article 7 of the [ICCPR](#), and has attained the status of a *jus cogens* norm. The failure to protect women from sex trafficking also represents a failure to ensure women’s right to equal protection under the law. This is a well-enshrined principle of international law.
- The Convention on the Rights of the Child, Article 35 states that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”
- Olaide A. Gbadamosi Esq, Executive Director of the Network for Justice and Democracy, has prepared a chart, adapted from a publication by the [Global Alliance Against Trafficking in Women](#), which details the human rights violated by the component criminal acts that make up the crime of human trafficking in [International Perspectives and Nigerian Laws on Human Trafficking](#), 46-49, 2006.

Sex trafficking may occur whether or not an international, national or regional border is crossed

- At its root, sex trafficking involves the sexual exploitation of women and girls. Transportation is not a required element of the criminal offence of sex trafficking. The United Nations Refugee Agency (UNHCR) states that “While these actions can all take place within one country’s borders, they can also take place across borders with the recruitment taking place in one country and the act of receiving the victim and the exploitation taking place in another. Whether or not an international border is crossed, the intention to exploit the individual concerned underpins the entire process.” (See: [UNHCR Guidelines on International Protection \(2006\): The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and](#)

[persons at risk of being trafficked](#), Section II(a)(10), 5.)

- At the same time, because regional, national and international borders are often crossed during the process of sex trafficking officials tasked with responding to such cases must be aware of their jurisdictional authority. Drafters of legislation on sex trafficking of women and girls should ensure the law is applicable *within* the territory when the offence is:
 - Committed in the territory of the country or state;
 - Committed on board a vessel or aircraft that is registered under the laws of the country or state at the time the offence was committed;
 - Committed by a national of the country whose extradition is refused on the grounds of nationality. (See: [UNODC Model Law Against Trafficking in Persons](#), Article 6, 2009)
- Drafters of legislation on sex trafficking of women and girls should ensure the law is applicable *outside* the territory when the offence is:
 - Committed by a national of the territory;
 - Committed by a stateless person who has his or her habitual residence in the territory at the time of the commission of the offence; or
 - Committed against a victim who is a national of the territory. (See [UNODC Model Law Against Trafficking in Persons](#), Article 7, 2009)

Sex trafficking may involve foreign nationals, citizens, and legal permanent residents of a particular country

Sex trafficking laws should apply all forms of trafficking in persons, whether national or transnational, whether or not connected with organized crime. (See: [UN Convention against Transnational Organized Crime](#), Art. 4; [UN Trafficking Protocol](#), Art. 1; [Council of Europe Convention Against Trafficking in Human Beings](#), Chap.1, Art.2) All trafficking victims, regardless of their nationality or legal status, are entitled to the protection of law enforcement. (See: [UNODC Model Law Against Trafficking in Persons](#), Art.4 commentary)

The purpose of sex trafficking laws, and the effective implementation of such laws must include: Prosecution, Protection, Prevention, and Partnerships

- Drafters should ensure that sex trafficking laws include provisions related to the role of prosecution, protection, prevention and partnerships. The sex trafficking law itself may lay out the broad principles and standards, while implementing legislation or regulations may set forth the more specific actions required.
- The [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](#) clearly declares that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries (states and counties) of origin, transit, and destination that includes measures to prevent such trafficking,

to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.” (See: [UN Trafficking Protocol](#) Preamble)

- The purposes of prevention, prosecution and protection are also clearly delineated in the [Council of Europe Convention Against Trafficking in Human Beings](#) and the [UNODC Model Law Against Trafficking in Persons](#). The purposes of partnership or coordination are also frequently mentioned as critical to the success of anti-trafficking efforts.
- Professor and Executive Director of [The Protection Project](#), Mohamed Mattar also discusses the importance of harmonization in the legislative scheme to address human trafficking. He writes, “In addition to the legislative movement relating to anti-trafficking laws specifically, there has also been a corresponding movement to harmonize immigration laws, labor laws, health laws, child protection laws, and other relevant legislation so as to cover the various phenomena linked to trafficking and thus ensure a comprehensive framework for addressing the phenomenon. Such legislative harmonization can serve to strengthen the response to a crime, especially one as complex as trafficking in persons, and one so interconnected with other crimes, including drug trafficking, arms trafficking, alien smuggling, money laundering, child sex tourism and child pornography, document fraud, and others.” (See [U.N. Expert Paper by Mohamed Mattar](#), p19)

Prosecution of Perpetrators of Sex Trafficking

Sex trafficking laws should clearly state that one purpose of the law is to “ensure effective investigation and prosecution; to promote international cooperation on action against trafficking in human beings.” (See [Council of Europe Convention Against Trafficking in Human Beings](#), Chap.1, Art.1; [UN Trafficking Protocol](#), Art.2; [UNODC Model Law Against Trafficking in Persons](#), Art.3) Effective prosecution deters sex trafficking particularly when convictions result in appropriate and serious punishment, when governments prioritize the prosecution of trafficking offences, and when victims are protected rather than punished. (See: [State Model Law on Protection for Victims of Human Trafficking](#), Division A, Section I(b)(6), 2005) (See also [Criminal Provisions](#) subsection)

Protection of Sex Trafficking Victims (See also [Victim and Witness Protection and Assistance](#) , [Civil Remedies](#), and [Immigration Provisions](#))

- Drafters should clearly set forth the purpose of protection of sex trafficking victims through assistance as well as “full respect for their human rights.” The duty to protect trafficked individuals arises specifically from the Trafficking and Children’s Protocols, as well as from fundamental human rights conventions, rules of *opinion juris* and customary international law. The failure to protect trafficked individuals violates numerous individual human rights: the right to life, liberty and security of person; the right to be free from slavery and slavery-like

practices; the right to be free from torture; the right to equal protection under the law; and the right to an effective remedy.

- Similarly, the [Council of Europe Convention Against Trafficking in Human Beings](#) has as one of its primary purposes “To protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution” while “considering that respect for victims’ rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives...” (See [Council of Europe Convention Against Trafficking in Human Beings](#), Preamble and Chap. 1, Art. 1; [UN Trafficking Protocol](#), Art. 2; [UNODC Model Law Against Trafficking in Persons](#), Art. 3; [U.N. Expert Paper by Mohamed Mattar](#), p19)

Prevention of Sex Trafficking (See also [Administrative and Regulatory Provisions](#))

Drafters should also clearly identify prevention as a primary purpose of the sex trafficking law. The prevention of sex trafficking must include a variety of measures such as national and local anti-trafficking task forces and coordinating bodies; national and local monitoring and reporting mechanisms or bodies; professional training programs for those enforcing anti-trafficking laws; measures to decrease the demand; and public awareness-raising campaigns designed specifically for both adults and children. (See: [UN Trafficking Protocol](#), Chap. 1, Art.2 and Chap. 2; [UNODC Model Law Against Trafficking in Persons](#), Art.3; [Council of Europe Convention Against Trafficking in Human Beings](#), Chap. 1, Art.1)

Partnerships (See also [Task Forces and Inter-Agency Cooperation](#))

- Finally, drafters should point out the vital partnerships that must be created and maintained in order to effectively combat sex trafficking. In fact, experts in the field of human trafficking emphasize the need to work in partnership or in a coordinated international, national and local response to effectively combat sex trafficking. Law enforcement, prosecutors, judges, service providers and the public must work together to use the full extent of the community's legal system to protect victims, hold perpetrators accountable, and enforce the community's intolerance of the sale of human beings for sex. Coordinated community response programs should engage the entire community in efforts to change the social norms and attitudes that contribute to sex trafficking. (See: [Coordinated Community Response](#), StopVAW, The Advocates for Human Rights; Letter from U.S. Secretary of State Hillary Rodham Clinton in the [U.S. State Department 2009 Trafficking in Persons Report](#); [UNODC Model Law Against Trafficking in Persons](#), Art. 3)
- Professor Mattar discusses the idea of coordinated community response by addressing participation and harmonization as critical elements to address trafficking. He writes:

“Civil society organizations are critical partners particularly in prevention and protection efforts, but can also be key in assisting the government in the area of prosecution, starting with their role in the identification of victims of trafficking, support and care for victims of trafficking throughout court proceedings, including the provision of legal assistance, medical and psychological aid, as well as in contributing to a dignified process of repatriation (if such is desired by the victim) and reintegration, or the process of integration into society if a residency status is granted. Prior to the UN Protocol, a role for civil society was rarely legislated for in domestic laws given that most tended to either lump victims of trafficking into a category of criminals, persons not entitled to the benefits victims are entitled to, or simply to amend the criminal code to criminalize the crime of trafficking, without providing for any prevention, protection, or participation mechanisms at all.”

(See: [U.N. Expert Paper by Mohamed Mattar](#), p.19.)

- Module 6 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#) (2009) discusses different forms of international and cross-jurisdictional cooperation and gives examples of successful efforts.
- See: *UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners* (2009), Module 6, available in [English](#).

Non-discrimination should be incorporated into each and every principle and provision

Laws should prohibit discrimination on any ground, including: race, color, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked or has participated in the sex industry, or other status. (See: [UNODC Model Law Against Trafficking in Persons](#), Art.3(2) commentary; [International Covenant on Civil and Political Rights \(ICCPR\)](#), Art.2, paragraph 1; [UN Trafficking Protocol](#), Art.14; [Council of Europe Convention Against Trafficking in Human Beings](#), Preamble)

Fair and equal treatment of child victims should also be incorporated into each and every principle and provision

- Drafters should ensure that special provisions related to the protection of child victims of sex trafficking are incorporated into the law. Such treatment should be afforded to child victims regardless of their or their parents' or the legal guardian's race, color, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked or has participated in the sex industry, or other status. (See [UN Trafficking Protocol](#), Art.14; [UNODC Model Law Against Trafficking in Persons](#), Art.22; [Council of Europe Convention Against Trafficking in Human Beings](#), Preamble)

- Drafters should also ensure that children who are trafficked for the purpose of sexual exploitation, including prostitution, are not treated as criminals and are not arrested, detained or deported. Instead, children should be provided with special protection and assistance. (See: [UNODC Model Law Against Trafficking in Persons](#), Art. 10; [UN Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Principle 7 and Guideline 4(5))
- The non-governmental organization “End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes” (ECPAT) has published a guide for [Strengthening Laws Addressing Child Sexual Exploitation](#), which recommends that special protection and assistance for child victims include:
 - Treatment of a victim as a child to the extent possible where the age is uncertain and until age is verified;
 - Appointment of a guardian to advocate for the best interests of the child and to accompany the child through the process ensuring that:
 - Direct contact between the child and perpetrator is avoided;
 - The child victim is fully informed about the criminal and security procedures;
 - The child may make an informed decision whether to testify in criminal proceedings ensuring that children who testify are kept safe;
 - Appropriate shelter is provided based upon the child’s age and special needs;
 - Individuals responsible for the care of child victims are adequately trained; and
 - Adoption of clear policies and procedures for the return and repatriation of child victims taking into account the best interests of the child and the capacity of the receiving state to provide long-term assistance;
 - Adoption of clear policies and procedures for the extradition of individuals for the offence of sex trafficking or when extradition does not take place, the prosecution of nationals for sex trafficking offences committed abroad.
- Before interviewing child trafficking victims, law enforcement should consult Module 9 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), which provides guidelines and good practices for working with child trafficking victims. (See: [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 9, 2009. Guidelines for the use of interpreters are available in Module 10 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#))

Definitions

Sex trafficking acts, means and purpose

Drafters should define sex trafficking to include:

- The acts of: recruitment, receipt, enticement, harboring, obtaining, providing, transferring, or transportation of persons;
 - The means of:
 - By any means (recognizing that no one can consent to being trafficked for the purpose of sexual exploitation); **OR**
 - By one of the following means to achieve the consent of a person having control over another person, for the purpose of exploitation (except where the trafficking victims are under age 18):
 - Threats or use of force; or
 - Other forms of coercion, of abduction, of fraud, of deception; the abuse of power or a position of vulnerability; or
 - The giving or receiving of payments or benefits to achieve the consent of a person having control over another person; **AND**
 - The purpose of: Sexual exploitation, which must include at a minimum, the exploitation of the prostitution of others.
-
- Drafters should ensure that the means element of the definition of sex trafficking is not a required element for the sex trafficking of children.
 - Advocates should ensure that the definition of sex trafficking does not create a hierarchy of victims of this grave human rights violation. The [UNODC Model Law Against Trafficking in Persons](#) suggests that governments draft definitions of sex trafficking that focus on the offender rather than on the state of mind of the victim. At times, law enforcement and other first responders fail to identify trafficking victims and instead may detain, arrest or charge a trafficking victim with a crime, such as prostitution. Such an approach clearly focuses blame on the victim rather than holding the perpetrator accountable for his/her criminal behavior.
 - The fourth guideline in the Report of the High Commissioner for Human Rights to the Economic and Social Council detailing [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#) reinforces this approach, stating that an adequate legal framework should “[Ensure] that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.” (See: [UN Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Guideline 4(5))
 - Protecting women and children from sex trafficking requires a recognition that sex trafficking and prostitution form part of a continuum of criminal activity committed by those who seek to profit from the sale of human beings for sex. Donna Hughes, a leading United States scholar on prostitution and sex

trafficking, has discussed the elements that contribute to the demand for the purchase of human beings for sex. The elements include:

1. A culture that tolerates or promotes sexual exploitation;
2. Men who buy commercial sex;
3. Exploiters who make up the sex industry;
4. States that are complicit in providing safe haven for traffickers either as source or destination countries.

(See: [The Demand for Victims of Sex Trafficking](#), Donna Hughes, 2005)

- Module 1 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#) provides case studies and practical examples of how the definitions contained in the [UN Trafficking Protocol](#) may be proven. (See [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 1, 2009.)

Force, fraud, or coercion

- Drafters should be aware that the use of the words “force” or “forced” is one of the most disputed elements of the definition of sex trafficking in many international instruments and national laws. Lawmakers and advocates alike have attempted to make a distinction between individuals who have been “forced” into commercial sexual activity and/or prostitution and those who have entered into such activity voluntarily. However, countries in the process of drafting definitions of sex trafficking should be cautious with the use of the terms force, fraud, and coercion. The United Nations Office on Drugs and Crime Model Law against Trafficking in Persons recommends that legislatures consider that “the seemingly ‘voluntary offer’ of a worker/victim may have been manipulated or was not based on an informed decision.” (See: [UNODC Model Law Against Trafficking in Persons](#), Art. 5(1)(i) commentary)
- Drafters should omit the means of “force, fraud, or coercion” for victims under the age of 18. The Ghana Human Trafficking Act of 2005 provides that “the consent of the child, parents or guardian of the child cannot be used as a defense in a prosecution.” The Norwegian Penal Code also recognizes that children cannot consent to being trafficked. It “provides that any person who commits any of the punishable acts against a person who is under 18 years of age shall be liable to imprisonment independent of any use of force or threats, misuse of a person’s vulnerability or other improper conduct.” (See: [Strengthening Laws Addressing Child Sexual Exploitation](#), 46, 2008)
- For victims 18 years of age and older, drafters should first seek to adopt a definition of sex trafficking which uses the phrase “by any means” because the means used to place a person into forced labor, slavery or servitude are irrelevant once [the] end goals are proven.” See: [Combatting Human Trafficking in the Americas: A Guide to International Advocacy](#), 41, 2007. Both the

Malaysian law and the Minnesota law recognize that consent is irrelevant in cases of sex trafficking of both adults and minors. (See: [U.N. Expert Paper by Mohamed Mattar](#), p.19; See [Minn. Stat. § 609.321, subd. 7a](#) and [Minn. Stat. § 609.325](#) (2009))

- The Belgian law on trafficking in human beings also recognizes that consent is irrelevant and imposes criminal sanctions on “anyone, who, to gratify the passions of another, shall have recruited, enticed, corrupted or held an adult for the purposes of sexual immorality or prostitution, even with the consent of that person...” (See: Belgium Law containing provisions to combat trafficking in human beings and child pornography, Chapter 1, Art. 3 amending Art. 380bis §1.1, 1995 available at [legislationline.org](#))
- The Colombian law states that “the consent given by the victim to any form of exploitation defined in this article will not construe a cause for exoneration from personal responsibility.” See: [Colombia Human Trafficking Law, Article 3](#), 2005 (Spanish).
- Some international standards such as [The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](#) (UN Protocol) recognize that traffickers often use subtle forms of “deception or the abuse of power or a position of vulnerability” to ensnare their victims. The Protocol holds a trafficker accountable if he commits the acts described in any of the following three situations:
 1. When the trafficker uses “threats or use of force” to achieve the consent of a person having control over another person, for the purpose of exploitation; **OR**
 2. When the trafficker uses “other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or a position of vulnerability” to achieve the consent of a person having control over another person, for the purpose of exploitation; **OR**
 3. When the trafficker uses the “giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

(See: [UN Trafficking Protocol](#), Art. 3.)

- In the United Kingdom, the Immigration Law Practitioner’s Association enumerated additional means of subtle control traffickers may use to exert control over their victims including: instilling fear of authority, isolation, and restrictions on freedom of movement. (See: [The Nature and Extent of Human Trafficking in Northern Ireland](#), Northern Ireland Human Rights Commission, 16, 2009)

- Module 4 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#) discusses the various forms of control traffickers exert over their victims, including the more subtle forms such as relationship control, isolation, and control of religion, belief and culture. It is important to remember that “just because a person has not been assaulted or threatened with violence does not mean they are not being subjected to a control method. Some of the subtle methods of control are equally or more powerful than physical force and threats.” (See: [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 4, 13, 2009)
- The German Criminal Code provides an example of a national law which subtly addresses the means of coercion.

“Whoever exploits another person through a coercive situation or the helplessness that is associated with their stay in a foreign country to induce them to take up or continue in prostitution, to commit sexual acts on or in front of the perpetrator or a third party through which they are exploited, or to allow them to be committed on the person by the perpetrator or a third party, shall be punished with imprisonment from six months to ten years. Whoever induces a person under twenty-one years of age to take up or continue in prostitution or any of the other sexual acts designated in sentence 1 shall be similarly punished.”

 (See: [German Criminal Code](#), Section 232)
- The Turkish Criminal Code provides an example of a national law which addresses coercion directly, but also cites the more subtle means traffickers often use to control their victims.

Sex Trafficking means to:

1. Recruit, abduct, transport or transfer or harbour persons for the purpose of subjecting to forced labour or service, prostitution, enslavement or for removal of body organs, by getting their consent by means of threat, oppression, coercion or using violence, of abusing influence, of deceit or of abusing their control over or the vulnerabilities of these persons shall be sentenced to imprisonment up to eight to twelve years and a fine corresponding to 10,000 days.
2. The consent of the victim shall be irrelevant in cases where the acts that constitute a crime are attempted with the intentions described in paragraph 1.
3. In cases where minors below the age of eighteen are procured, abducted, transported or transferred or harboured with the intentions specified in paragraph one, the penalties foreseen in paragraph 1 shall still be applied to the perpetrator, even when no intermediary actions relating to the crime are committed.
4. Legal entities shall also be subject to security measures for such crimes. (See: [Criminal Code of Turkey](#), Art. 80)

CASE STUDY: In the United States where the Trafficking Victims Protection Act (TVPA) has been in effect for ten years, lawmakers and criminal justice professionals have begun to realize the difficulty of proving an individual has either perpetrated or been victimized by sex trafficking. In the past, the most severe forms of human trafficking required the proof of “force, fraud, and coercion” to secure the toughest penalties and most effective protection of victims.

But recently, government officials have begun to shift their approach recognizing the difficulty of proving “force, fraud, or coercion.” In December 2008, the United States Department of Justice advised individual states to draft sex trafficking and/or pimping and pandering laws without the requirement for proof of “force, fraud, and coercion.” (See: [The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008](#), Section 225)

In addition, [Section 222 of the 2008 William Wilberforce Trafficking Victims Protection and Reauthorization Act](#) has been interpreted to mean that “proof of fraud, force or coercion is now to be gauged through the eyes of the persons in the victims’ particular circumstances, rather than being viewed through a ‘reasonable person’ standard.” (See: The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: [50 Key Provisions](#) published by the Salvation Army)

This evolving approach comes closer to recognizing that one cannot consent to being trafficked for the purpose of prostitution, particularly where a trafficker or pimp is involved. As advocates on the front lines of assisting those attempting to leave prostitution often explain, the existence of prostitution – be it street prostitution or in brothels – is linked with conditions that create an environment where those seeking to profit from the exploitation of women and children may prey on those most vulnerable, thereby leading them into the clandestine world of sex trafficking.

Despite the shifting approach of the United States, concerns remain that the federal trafficking law’s difficult standards will not protect trafficking victims or enable prosecution of sex traffickers. In October 2007, the [Coalition Against Trafficking in Women](#) authored a letter that was signed by one hundred representative signers from the anti-trafficking community. The letter expressed concern over the Department of Justice’s promotion of a model state statute that required proof of force, fraud or coercion. The letter stated that:

“It is well documented that many victims enslaved by traffickers suffer from traumatic bonding and related conditions that make it impossible for them to give the testimony essential to the prosecution of fraud, force or coercion cases. In fact, we believe that the Department’s policy will cause predatory traffickers to *increase* their acts of violence and psychological abuse in order to ensure that the persons they abuse will not serve as prosecution witnesses.” (See: [Coalition Against Trafficking in Women Letter to Acting Attorney General Peter Keisler, October 2007](#))

In December 2007, a bill was referred by the U.S. House of Representatives to the Committee on the Judiciary, which would have added a new offense to Title 18, Chapter 117 of the U.S. Code to define sex trafficking as: “Whoever knowingly, in or affecting interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or in any territory or possession of the United States, persuades, induces, or entices any individual to engage in prostitution for which any person can be charged with an offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.” (See: [H.R. 3887, 110th Congress, 1st Session](#)) This language was not included in the final bill reauthorizing the Trafficking Victims Protection Act.

Abuse of a position of vulnerability

- Drafters should consider including additional clarifications in sex trafficking laws to explicitly describe the vulnerabilities of trafficking victims, except where drafters decide to use the terms “by any means.” A woman’s or girl’s vulnerabilities directly relate to the means traffickers and pimps need to use to sexually exploit women and girls. Various legal instruments describe this vulnerability as follows:
 - Any situation in which the person involved believes he or she has no real and acceptable alternative but to submit; or
 - Taking advantage of the vulnerable position a person is placed in as a result of
 - Having entered the country illegally or without proper documentation; or
 - Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance; or
 - Reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical or mental disability; or
 - Promises or giving sums of money or other advantages to those having authority over a person; or
 - Being in a precarious situation from the standpoint of survival; or
 - Other relevant factors.
 - Abuse of the economic situation of the victim or of dependency on any substance.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 5 commentary)

- For example, the Bulgarian “Combating Trafficking in Human Beings Act” defines “trafficking in human beings” as “the recruitment, transportation, transfer, concealment or acceptance of human beings, regardless of their own will, by means of coercion, abduction, deprivation of liberty, fraud, abuse of power, abuse of a state of dependence, or by means of giving, receiving or promising benefits to obtain the consent of a person who has control over another person, when it is carried out for the purpose of exploitation.” (See: [Combating Trafficking in Human Beings Act, Additional Provison 1\(1-2\)](#))

Exploitation; sexual exploitation; or commercial sex act

- Drafters should at a minimum define the purpose of sex trafficking as sexual exploitation, including prostitution. Drafters of existing laws have used variations of the term “exploitation” to address this critical component of sex trafficking laws. The UN Protocol uses the term “exploitation,” whereas national laws may use the term “sexual exploitation” or “sexual purposes” or “commercial sex act” and local laws may use the term “prostitution.”
- Drafters should carefully consider the terms used for the purpose of the sex trafficking contained in the laws cited here and adopt a definition which provides the broadest protection for victims of all forms of sexual exploitation in harmony with national and local laws. The following language provides examples from a number of countries.
 - “...when it is carried out for the purpose of exploitation; exploitation” means the illegal use of human beings for:
 - debauchery,
 - removal of physical organs,
 - forced labour,
 - slavery or servitude (See: Bulgarian [“Combating Trafficking in Human Beings Act”, Additional Provision 1\(1-2\)](#))
 - “...to aid in the prostitution of the individual.” [Minnesota Statute § 609.321](#).
 - “Whoever purchases another person, takes possession of it, accommodates it, transports it, sells it, delivers it or disposes with it in any other way, or acts as a broker in such operations, for the purpose of prostitution or other forms of sexual exploitation....” (See: [Slovenian Criminal Code](#), Article 387.a, 2005)
 - “...with the aim that the person should be subjected to an offence under Chapter 6, Section 1, 2, 3, 4, 5 or 6, exploited for casual sexual relations or in another way exploited for sexual purposes....” (See: [Swedish Penal Code](#), Chapter 4, Section 1a)
 - “...for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation. (See: [UN Trafficking Protocol](#), Art. 3)
 - “...for the purpose of a commercial sex act.” (See: TVPA, [22 U.S.C. 7102](#), (9)) Commercial sex act is “Any sex act on account of which anything of value is given to or received by any person.” (See: TVPA, [22 U.S.C. 7102](#), (3))

Trafficking victims: non-detention/arrest/charge/prosecution

- Drafters should include provisions that explicitly state that “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.” (See: [UN Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Principle 7 and Guideline 4(5); [UN Convention against Transnational Organized Crime](#), Article 18(12) and 18(27); [Model Provisions for State Anti-Trafficking Laws](#), Center for Women Policy Studies, Protections for Trafficking Victims Proposed Language, 6, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division D, Section 3, 2005; [Council of Europe Convention Against Trafficking in Human Beings](#), Art. 26, 2005; [UNODC Model Law Against Trafficking in Persons](#), Art. 10, 2009)
- Articles 6 and 10 of the Republic of Korea Act on the Punishment of Procuring Prostitution and Associated Acts provide an example of this non-detention approach.

Article 6 (Exceptions to the Punishment for Victims of Prostitution and the Protection thereof)

(1) The victims of prostitution shall not be subject to punishment for prostitution.

(2) In case where there is a good reason to believe that the accused or a witness is a victim of prostitution in the process of an investigation, the prosecutor or the judicial police officer shall immediately notify the victim's legal representative, family members, relatives, or legal counsel, and take appropriate actions to protect the victim including personal protection, confidentiality of investigation, transfer of victims to family members, relatives, or assistance facilities and counseling centers for the victims.

A prosecutor or a judicial police officer may not give notification when unavoidable circumstances exist such as protecting the privacy of the accused or the witness.

(3) In case where the court or law enforcement agencies investigate or question as witnesses, reporters (report includes complaints and claims hereinafter) of crimes defined under this Act or victims of prostitution (hereinafter collectively referred to as “reporter, etc.”), Article 7 or Article 13 of Protection of Reporters, etc. of Specific Crimes Act shall be applied *mutatis mutandis*. In such case, existence of concerns for retaliation are not required except for Article 9 and Article 13 of Protection of Reporters, etc. of Specific Crimes Act.

Article 10 (Invalidation of Claims Arising from Illegal Causes)

(1) The claim that a person who procures prostitution and does associated acts, a person who employs and recruits those who sell sex or introduces and mediates prostitution, or a person who has trafficked another person for the purpose of prostitution has on those who sell sex or is planning to do so regarding one's deed shall be invalidated regardless of the form or pretext of the contract. The same shall apply when the claim is transferred to a third party or the liability is undertaken.

(2) The prosecutor or the judicial police officer shall check and take into consideration whether money, valuables, property benefits were provided for the purpose of seducing and coercing prostitution or preventing a person from leaving the brothel when investigating a case regarding complaints and claims resulting from questionable noncompliance of a liability related to illegal causes as set forth in paragraph (1).

(3) When investigating a person who sells sex or victims of prostitution, the prosecutor or the judicial police officer shall notify the person or the legal representative the fact that claims under paragraph (1) are invalidated and that assistance facilities are available.

(See: The Republic of Korea [Act on the Punishment of Procuring Prostitution and Associated Acts](#), 2004)

- Current research clearly demonstrates that women and girls are being detained, arrested, charged and prosecuted for criminal activity directly resulting from being trafficked. This represents one of the most pressing concerns for the protection of the human rights of trafficking victims. Law enforcement and prosecutors should [screen women and girls in prostitution](#) to determine whether they have in reality, been trafficked into prostitution or other forms of sexual exploitation.
- Where trafficking victims have criminal records because of being arrested, charged and/or convicted for prostitution-related offenses which are a result of the trafficking situation, these criminal records should be expunged. The state of New York, United States, has recently taken this innovative approach. [Senate File 4429/Assembly File 7670](#) would enable victims of sex trafficking who are convicted of prostitution related offenses as a result of the trafficking to apply to the court to get the conviction vacated. The bill was passed by the Assembly in a vote of 139-0, and was [delivered to the Senate in March 2010 where it awaits action](#).

Criminal provisions

- Drafters should criminalize the offence of sex trafficking. Drafters should criminalize attempts to commit sex trafficking, aiding and abetting sex trafficking, the unlawful use of documents in furtherance of sex trafficking, and unlawful disclosure of the identity of victims or witnesses; and create accomplice liability for sex trafficking. Drafters should ensure that the penalties for sex trafficking address aggravating circumstances and punishment for public officials involvement and complicity in sex trafficking and related exploitation. (See: [UN Trafficking Protocol](#), Arts. 3 and 5)
- Drafters should also ensure that the criminalization of sex trafficking is accompanied by penalties for the buyers. A growing body of research suggests that efforts to address the demand for the sale of human beings for sex is a critical component to combating sex trafficking. (See also the sub-section on [Penalties for Buyers](#))
- Drafters should ensure that criminalization of sex trafficking and sex trafficking-related offences do not inadvertently penalize trafficking victims for crimes committed as a result of being trafficked. Drafters should affirmatively protect trafficking victims from being arrested, charged, detained and convicted of such crimes. Without such protections, the human rights of trafficking victims cannot be protected. Furthermore, trafficking victims will be reluctant if not unwilling to participate in the prosecution of their traffickers without such protections because they fear retaliation, harm and death. Without prosecutions and convictions of sex traffickers, there will be no deterrents for this crime and no message to the community about its heinous and criminal nature.

Specific criminal offences

- Criminal provisions addressing the following should be included in legislation to combat sex trafficking:
 - Criminal sex trafficking offences by traffickers and buyers
 - Attempt sex trafficking offences (those who attempt sex trafficking should be held accountable in line with the offence of “attempt” of other serious crimes)
 - Aiding and abetting (those who assist and participate in the sex trafficking of others should be held accountable in line with the offence of “aiding and abetting” other serious offences)
 - Accomplice liability for sex trafficking
 - Organizing and directing others to commit sex trafficking offences
 - Unlawful use of documents in furtherance of sex trafficking
 - Unlawful disclosure of the identity of victims or witnesses
 - Aggravating circumstances for sex trafficking offences
 - Punishment for public officials involvement and complicity in trafficking and related exploitation

(See: [UN Trafficking Protocol](#), Art.5; [UNODC Model Law Against Trafficking in Persons](#), Chapters V & VII, 2009; [UN Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Guideline 4(10); [UNHCR Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked](#), Section II(d)(21-24), 9-10, 2006)

- Drafters should review the common elements found in model legislation and existing laws against sex trafficking. (See [Resources for developing laws on sex trafficking](#)) In addition, drafters should be aware of the effectiveness of current sex trafficking legislation by reviewing reports on the implementation of such laws. The United Nations Office on Drugs and Crime (UNODC) and the United States Department of State publish annual reports on trafficking in persons. Drafters should review these assessments of national governments' responses to sex trafficking around the world in order to incorporate lessons learned into new draft laws on the sex trafficking of women and girls. Drafters may also wish to review the submissions of their respective national governments to the [Committee on the Elimination of Discrimination against Women](#) as well as the concluding observations of this committee on the state party's reports. Shadow reports by non-governmental organizations should also be consulted whenever drafters review government submissions to ensure drafters are aware of the on-the-ground response to government efforts to draft and implement sex trafficking laws.
- The [UNODC 2009 Global Report on Trafficking in Persons](#) indicated that ninety-eight (63%) of the 155 countries and territories in its report had criminalized human trafficking. Twenty-seven of those countries had a specific offence of trafficking in persons restricted to some forms of exploitation and to some categories of victims (e.g., trafficking for sexual exploitation, child trafficking) or without a clear definition of the offence. In 2009, twenty-eight countries were ranked at Tier 1 as countries that fully comply with the United States Trafficking Victims Protection Act's minimum standards according to the [Trafficking in Persons Report](#). The [Monitoring State Progress to Protect Children and Young People from Trafficking for Sexual Purposes report](#) by ECPAT International reported that as of January 2010, only 29% of the forty-one countries surveyed have adequately criminalized child trafficking in line with the UN Trafficking Protocol.
- The criminal offence of sex trafficking typically includes three distinct components: the acts by which sex trafficking is committed, the means by which sex trafficking is committed, and the purpose for which sex trafficking is committed.

Criminal acts: recruiting, receiving, transporting, or harboring

Drafters should incorporate the acts of recruiting, receiving, transporting or harboring at a minimum; but should also consider whether to include any of the acts contained in the laws cited here. (See also [Definitions](#) sub-section)

- “Recruitment, transportation, transfer, concealment or acceptance of human beings, regardless of their own will....” (Bulgarian “[Combating Trafficking in Human Beings Act](#)”, [Additional Provision 1\(1-2\)](#)).
- “Receiving, recruiting, enticing, harboring, providing or obtaining an individual” (See [Minn. Stat. § 609.321, subd. 7a](#) (2009))
- “Whoever, in order to derive a material benefit, induces another person to practice prostitution or facilitates it....Whoever derives material benefits from prostitution practiced by another person.... (See: [Polish Penal Code](#), Art. 204)
- “Recruits, transports, accommodates, receives or implements some other such measure with a person” See: [Swedish Penal Code](#), Chapter 4, Section 1a)
- “Recruitment, transportation, transfer, harbouring or receipt of persons” (See: [UN Trafficking Protocol](#), Art. 3)
- “Recruitment, harboring, transportation, provision, or obtaining of a person....” (See: [22 U.S.C. 7102](#), (9))

Criminal means: threat, force, coercion, fraud, abuse of power, or position of vulnerability; or by any means

- Drafters should first seek to adopt a definition of sex trafficking which uses the phrase “by any means.”
- Alternately, drafters should adopt a definition of sex trafficking such as that contained in [The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](#) (UN Protocol), which recognizes that traffickers often use subtle means of “deception or the abuse of power or a position of vulnerability” to ensnare their victims. Drafters should consider broadly defining the means and should consider the means contained in the laws cited here and which are detailed in the Definitions section of this module.
 - “...regardless of their own will, by means of coercion, abduction, deprivation of liberty, fraud, abuse of power, abuse of a state of dependence, or by means of giving, receiving or promising benefits to obtain the consent of a person who has control over another person....”(See: Bulgarian “[Combating Trafficking in Human Beings Act](#)”, [Additional Provision 1\(1-2\)](#))
 - “...the use of unlawful coercion or deception, exploiting someone’s vulnerable situation or by some other such improper means....” (See: [Swedish Penal Code](#), Chapter 4, Section 1a)

Criminal purposes: exploitation of the prostitution of others, sexual exploitation, or commercial sex act

Drafters should clearly state the purpose of the criminal act. Drafters of existing laws have used variations of the term “exploitation” to address this third critical component of sex trafficking laws. Drafters may also want to consider the forms of exploitation contained in the laws cited here.

- “...when it is carried out for the purpose of exploitation; exploitation” means the illegal use of human beings for:
 - debauchery,
 - removal of physical organs,
 - forced labour,
- slavery or servitude (See: Bulgarian [“Combating Trafficking in Human Beings Act”, Additional Provision 1\(1-3\)](#))
- “...for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, unlawful adoption, or a similar relationship or illicit transplantation of human body parts....” (See: [Macedonian Criminal Code](#), Art. 418-a)
- “...to aid in the prostitution of the individual.” (See [Minn. Stat. § 609.321, subd. 7a](#) (2009))
- “...with the aim that the person should be subjected to an offence under Chapter 6, Section 1, 2, 3, 4, 5 or 6, exploited for causal sexual relations or in another way exploited for sexual purposes....” (See: [Swedish Penal Code](#), Chapter 4, Section 1a)
- “...for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation. (See: [UN Trafficking Protocol](#), Art. 3)
- “...for the purpose of a commercial sex act.” (See: [22 U.S.C. 7102](#), (9))

Penalties for sex traffickers

- Drafters should ensure that the punishment for sex trafficking is sufficiently severe and commensurate with similarly serious offences such as rape in order to hold the offender accountable and provide prosecutors with an effective tool. Countries ranked at Tier I as countries that fully comply with minimum standards in the [U.S. State Department 2009 Trafficking in Persons Report](#) have established sentences with ranges such as 2-15 years (Czech Republic) to “up to 10 years” (Austria, Korea) to 13-23 years (Colombia) to 12-25 years (Australia) to a maximum of life imprisonment (Nigeria). (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 2009)
- Drafters should review Module 14 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), which provides considerations for sentencing in trafficking in persons cases, including aggravating and mitigating factors. (See [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 14, 2009)
- Drafters should ensure that the offence of sex trafficking of an individual under the age of 18 carries a harsher penalty either by defining a separate offence or including an aggravating factor. Drafters should consider the following examples of language related to the sex trafficking of individuals under age 18.
 - “For the purpose of this Division, an offence against section 270.6 (sexual servitude offences) or 270.7 (deceptive recruiting for sexual services) is an aggravated offence if the offence was committed against a person who is under 18.” (See: [Australian Criminal Code Amendment](#) (Slavery and Sexual Servitude) Act of 1999)
 - “(Placing or holding persons in conditions of slavery or servitude). – Whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way, shall be punished with imprisonment from eight to twenty years. Placement or maintenance in a position of slavery occur when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question. The aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in the first paragraph above are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”. (See: Criminal Code of Italy in [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 1, 3, 2009)

- “(a) Whoever, while acting other than as a prostitute or patron, intentionally does any of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$50,000, or both:
 1. solicits or induces an individual under the age of 18 years to practice prostitution;
 2. promotes the prostitution of an individual under the age of 18 years;
 3. receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual under the age of 18 years; or
 4. engages in the sex trafficking of an individual under the age of 18 years. (See: [Minnesota Statute § 609.322, subd. 1\(a\), 2009](#))
- Sex Trafficking means to 1. “recruit, abduct, transport or transfer or harbour persons for the purpose of subjecting to forced labour or service, prostitution, enslavement or for removal of body organs, by getting their consent by means of threat, oppression, coercion or using violence, of abusing influence, of deceit or of abusing their control over or the vulnerabilities of these persons shall be sentenced to imprisonment up to eight to twelve years and a fine corresponding to 10,000 days. 2. The consent of the victim shall be irrelevant in cases where the acts that constitute a crime are attempted with the intentions described in paragraph 1. 3. In cases where minors below the age of eighteen are procured, abducted, transported or transferred or harboured with the intentions specified in paragraph one, the penalties foreseen in paragraph 1 shall still be applied to the perpetrator, even when no intermediary actions relating to the crime are committed. 4. Legal entities shall also be subject to security measures for such crimes. (See: [Turkish Criminal Code](#), Art. 8)
- “If any of the following circumstances are present, the offences under article 8 shall be punishable by imprisonment for ...and/or a fine of/up to...where the victim is a child.” See: [UNODC Model Law Against Trafficking in Persons](#), Art. 9.
- “The recruitment, transportation, transfer, harbouring or receipt of a child [person under 18 years of age] for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means [of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person].” See: [UN Trafficking Protocol](#), Art. 3.
- “Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age.” (See: United States Trafficking Victims Protection Act, [22 U.S.C. 7102](#), (8)(A))

- Drafters should also ensure that aggravating factors carry enhanced criminal penalties where the offender:
 - Has committed a prior qualified human trafficking-related offence, which should include labor trafficking, sex trafficking, prostitution of another, or unlawful conduct related to documents in furtherance of labor or sex trafficking; or
 - The offence involved a sex trafficking victim who suffered bodily harm during the commission of the offence; or
 - The time period that a sex trafficking victim was held in the trafficking situation exceeded 180 days; or
 - The offence involved more than one sex trafficking victim. (See: Minnesota Statutes [§ 609.321](#) and [§ 609.322](#), 2009; and [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 2006)

- The Albanian criminal code provides that if the sex trafficking offence “causes serious consequences to health,” the punishment is not less than 15 years of imprisonment. If the sex trafficking offence causes death, the punishment is life imprisonment. (See: [Albanian Criminal Code](#), Article 110/a and 114/b)

- Drafters should finally ensure, where possible under criminal sentencing laws and regulations and consistent with punishments for other serious crimes such as rape, that judicial discretion to reduce sentences is limited and that convicted sex traffickers are sentenced to mandatory imprisonment.

Promising Practice: In Denmark, sentences for convicted traffickers have ranged from 12 to 42 months imprisonment and all nineteen of the convicted traffickers have served some prison time. In the country of Georgia, all ten of those convicted for trafficking in 2007 served time in prison with an average sentence of 14-15 years. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 121, 140, 2009)

Penalties for buyers

- Drafters should be aware that while sex trafficking laws do not typically include criminal penalties for buyers, such penalties must be present in the existing criminal code in order to address the demand for the sale of women and girls for sex, which fuels sex trafficking. Penalties should be sufficiently severe so as to deter repeat offences. The Nordic countries, particularly Sweden and Norway, have taken strong stances on punishing those who purchase sexual services. The penal codes of the two countries criminalize the purchase of sex, but not the sale of sex recognizing that prostitution is a form of violence against women, sexual exploitation, and gender inequality. While official statistics detailing the impact of the Swedish statutes are not yet available, researchers from [Human Rights Without Frontiers](#) have reported that the number of men purchasing sexual services in Sweden has declined. Government officials in Norway have also reported a decrease in the purchase of sexual services. (See: [Sweden's Demand-Focused Policy](#), 2009; [Contra Bonos Mores and the Sex Purchase Ban in Norway](#), 2010)

CASE STUDY: A 2009 report written by Charlotta Holmström and May-Len Skilbrei and published by the Nordic Council of Ministers and the Nordic Council, provides an important comparative analysis of the scope and prevalence as well as the legislative responses to prostitution and human trafficking in the countries of Sweden, Norway, Denmark, Finland, and Iceland. The differences in legislation in each of the countries may have had an effect on the scope and prevalence of prostitution. Every Nordic country prohibits the trafficking of individuals for sexual purposes. At the same time, each of the countries has attempted to address the market for sex trafficking by adapting its prostitution laws.

In Sweden, the scope and prevalence of prostitution has declined to about 600 women in street and internet prostitution. Since 1999, Sweden has prohibited the purchase, but not the sale of sexual services. In Norway, more than 2,654 women are selling sex on the streets and elsewhere. A ban on the purchase of sexual services was adopted by Norway in 2009.

In Denmark, prostitution is increasing both on the internet and the streets with an estimated 5,567 persons in prostitution. Since 1999, earning a living through prostitution was no longer prohibited in Denmark. In Finland and Iceland, there have also been increases and more visible prostitution. Finland has prohibited buying and selling sex in public places since 1999, but has been considering an amendment to the criminal law to punish the purchase of sexual services in general since 2005. Iceland prohibits earning a permanent living from selling sexual services.

The decreasing numbers of women in prostitution and the decrease in the demand in Sweden have been linked to the changes in the Swedish law. Norway has also experienced a decrease in the number of men purchasing sex since their law took effect.

(See: [Prostitution in the Nordic Countries](#), Nordic Council of Ministers, 2009)

- In some countries, prosecutors and the criminal justice system require that a convicted buyer attends a “john school” as a condition of their sentence. The purpose of such programs is to reduce the demand for the sale of human beings for sexual acts and to educate offenders about the harm to victims and the community. Such schools exist in the United States and elsewhere. For example, in the Republic of Korea 39 “John schools” educated 17,956 first-time male “clients” of prostitution. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 178, 2009)

CASE STUDY: In the Republic of Korea, the government has begun to recognize the importance of punishing those who buy or procure sex from others. Such recognition is important both as it relates to holding those who buy other human beings for sex accountable and to addressing the demand. In 2004, the Act on the Punishment of Procuring Prostitution and Associated Acts and the Act on the Prevention of Prostitution and Protection of Victims were enacted.

According to the Korea Women’s Associations United (KWAU), both a fire in a brothel in 2000 and an active campaign by women’s organizations prompted the government to enact these laws. The KWAU regards the laws as a significant step toward the promotion and protection of the human rights of prostituted women. As of January 2007, the association credited the laws with results such as increased rates of arrest for those buying sex and a reduction in crimes such as forced confinement. According to a 2006 report by End Child Prostitution and Trafficking (ECPAT), red-light districts were “reduced by more than 30 per cent, and a survey conducted by the Ministry of Gender Equality and Family showed that, of 1181 respondents, 86 per cent of male respondents indicated that they bought sex services less frequently after the acts were enforced.” (See: [Global Monitoring Report on the Status of Action Against Commercial Exploitation of Children: South Korea](#), ECPAT International, 20, 2006)

In addition, the Juvenile Protection Law Against Sexual Exploitation (2000) punishes those who buy sex from youth. According to various non-governmental organizations, approximately 100,000 runaways are at risk for sexual exploitation in the country. In fact, one NGO estimated that 43 per cent of youth runaways they surveyed had been approached to engage in the sex trade. According ECPAT, prostituted women and children are treated as crime victims under the Act on the Punishment of Procuring Prostitution and Associated Acts, but not under the Prevention of Prostitution and Protection of Victims law.

Both KWAU and ECPAT reported that the passage of the laws mentioned here has generated increased public awareness that prostitution is a form of violence and sexual exploitation and that “trafficking in human beings for sexual purposes was not an issue involving perpetrators and victims only, but a human rights issue affecting the nation as a whole.” (See: [Global Monitoring Report on the Status of Action Against Commercial Exploitation of Children: South Korea](#), ECPAT International, 2006)

See: [Statement by the Minister of Gender Equality and Family, The 39th Session of the Convention on the Elimination of All Forms of Violence Against Women](#), 5-6, 2007; [The Korean Shadow Report](#), Korean Women’s Associations United, 38-42, 2007; [Global Monitoring Report on the Status of Action Against Commercial Exploitation of Children: South Korea](#). ECPAT International. 2006.

- Human rights practitioners suggest additional research on strategies to reduce the demand is needed because prevention efforts that focus on education, communication, and information alone have not led to a significant decline in the numbers of sex trafficking victims. An approach which shifts the focus to countries where men consume the sexual services of trafficked women is needed. (See: [Trafficking in Human Beings and Sexual Exploitation: Preliminary Research on the Reduction of Demand](#), Human Rights without Frontiers, 2010)

Prostitution and sex trafficking offences

- Drafters should, at a minimum, include prostitution as one of the forms of sexual exploitation outlined in the law. Drafters should also carefully review the laws on prostitution to determine whether such laws need to be reformed. The existence of the sex industry and the demand for the sale of women and children for sex creates the conditions that allow for traffickers to operate. The Coalition Against Trafficking in Women has included information on “prostitution legal reform” in their online library of resources. (See: [Prostitution Legal Reform](#), Coalition Against Trafficking in Women, 2002-2009)
- In some countries, the recognition of the interconnectedness of sex trafficking and prostitution takes the form of laws which specifically use the word “prostitution” and/or place the sex trafficking law in the same section of the criminal code as the prostitution-related offences. In other countries, sex trafficking is defined as having the purpose of sexual exploitation, of which prostitution is one form.
- Countries around the world have taken one of four approaches to prostitution laws: prohibition, regulation, abolition, and decriminalization. The prohibitionist approach is characterized by criminalization of all prostitution-related activities: soliciting, procuring, pimping, and brothel keeping. The regulation approach is characterized by the legalization and regulation of the sex industry. The abolitionist approach is characterized by the treatment of women and children used in prostitution as victims in need of services and the treatment of the buyers and traffickers as perpetrators. In this scheme, those who sell sex acts are decriminalized, whereas those who buy others for sex are criminalized. The decriminalization approach is a strategy to achieve either the abolitionist approach or the regulation approach. In some countries, like New Zealand and Thailand, decriminalization was a means to regulation. In New Zealand, all offenses including prostitution, brothel keeping and other related offenses were decriminalized by the national parliament, which then tasked local governments with promulgating regulations of the sex industry. In other countries like Sweden, decriminalization is a means to abolition. Those who buy other human beings for sex or promote their sexual exploitation such as pimps and traffickers face criminal penalties. Those who sell sex do not face such penalties. (See: [The Demand for Victims of Sex Trafficking](#), Donna Hughes, 37-41, 2005)

- In the United Kingdom, the definitions of prostitution and sex trafficking are linked. For example, the offences of:
 - “Causing or inciting prostitution for gain” involves “intentionally caus[ing] or incit[ing] another person to become a prostitute in any part of the world, and [doing] so for or in the expectation of gain for himself or a third person;”
 - “Controlling prostitution for gain” involves the “[intentional control of] any of the activities of another person relating to that person’s prostitution.”
 - Sex trafficking is committed when a person intentionally arranges or facilitates another person’s arrival, departure, or travel within the United Kingdom and
 - “he intends to do anything which if done will involve the commission of a relevant offence (such as those mentioned above) or
 - he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world,
 - which if done will involve the commission of a relevant offence.”

(See: United Kingdom [Sexual Offences Act of 2003](#))

- In Germany, the definitions of prostitution and sex trafficking are also linked. Section 232 of the German Criminal Codes states that:

(1) Whoever, for his own material benefit, exerts influence on another person, with knowledge of a coercive situation, to induce the person to take up or continue in prostitution, shall be punished with imprisonment for not more than five years or a fine. Whoever, for his own material benefit, exerts influence on another person, with knowledge of the helplessness associated with the person's stay in a foreign country, to get the person to engage in sexual acts, which the person commits on or in front of a third person or allows to be committed on the person by the third person, shall be similarly punished.

(2) Whoever exerts influence:

1. on another person with knowledge of the helplessness associated with the person's stay in a foreign country; or
2. on a person under twenty-one years of age,
 - to induce the person to take up or continue prostitution or to get the person to take it up or continue it, shall be punished with imprisonment from six months to ten years.

(3) In cases under subsection (2) an attempt shall be punishable.

(See [German Criminal Code](#), Section 232)

- In Sweden, the definition of human trafficking is linked with sexual exploitation. For example, the offence of human trafficking is defined as:

“the use of unlawful coercion or deception, exploiting someone’s vulnerable situation or by some other such improper means recruits, transports, accommodates, receives or implements some other such measure with a person,

and thereby assumes control over the person, with the aim that the person should be:

- subjected to an offence under Chapter 6, Section 1, 2, 3, 4, 5 or 6, exploited for causal sexual relations or in another way exploited for sexual purposes,
- exploited in war service or compulsory work or other such compulsory condition,
- exploited for the removal of organs, or
- exploited in another way in a situation that involves a distressful situation for the vulnerable person.

(See: [Swedish Penal Code](#), Chapter 4, Section 1a)

Evidence of prior sexual activity or prostitution convictions

- Drafters should review the rules of evidence for the particular jurisdiction where the sex trafficking law will be implemented. Rules of evidence related to the impeachment of witnesses must not be based on a gendered concept that sexual virtue is equivalent to credibility.
- Drafters must carefully guard against laws and rules, which allow impeachment based on evidence of prostitution convictions reasoning that prostitution is a crime involving “dishonesty” or “moral turpitude.” This reasoning is flawed and based on discriminatory attitudes and double-standards for women and men, which promote the view that a woman’s honor and therefore her truthfulness and credibility depend on her chastity, whereas a man’s honor and therefore his truthfulness and credibility depend on his sworn statement regardless of whether or not he is chaste.
- Drafters must ensure that evidence of prior sexual conduct, including prostitution, is not used to impeach sex trafficking victim’s testimony. Neither a reputation for nor specific acts of prostitution should be admitted as evidence to impeach the trafficking victim’s credibility. (See: Julia Simon-Kerr, “Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment,” Yale Law Journal (June 2008))

Victim and witness protection and assistance

Drafters should ensure that protections for victims and witnesses include the identification and screening for sex trafficking victims, a reflection period, provision of basic benefits and services, crime victim rights, crime victim-witness protection, and remedies for immigrant victims.

Identification and screening for sex trafficking

- Drafters should ensure that sex trafficking laws require law enforcement and other first responders to proactively identify trafficking victims. Indicators and screening questions have been developed to assist non-governmental organizations, law enforcement and others to identify trafficking victims. (See: [UNODC Anti-Human Trafficking Manual, Module 2](#), 2009) Once identified, trafficking victims should be referred to service providers for assistance. Formal referral mechanisms should be put in place to ensure such assistance as in the Czech Republic. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 120, 2009)
- Law enforcement, service providers and medical professionals, in particular, should look beneath the surface of any situation where they suspect an individual has been trafficked for labor or for sexual exploitation. In particular, individuals detained on prostitution-related offences must be screened given the clear links between sex trafficking and prostitution. While not all individuals involved in prostitution are trafficked, many will clearly meet the definition of a trafficking victim under the UN Protocol definition, national or local law. Screening is particularly important where children are concerned so that rather than being placed in juvenile detention, children receive services.
- The UN Office on Drugs and Crime created an [Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), which contains a module describing the indicators that may be present to assist first responders in identifying trafficking victims. Indicators include, but are not limited to:
 - The individual feels they cannot leave the situation;
 - The individual displays anxiety, fear, and distrust;
 - The individual feels threatened or that he/she will be threatened or that his/her family is or will be threatened if she is not compliant;
 - The individual has injuries that appear to have resulted from an assault;
 - The individual is unable to move or leave a job;
 - The individual is isolated from any support system;
 - The individual is deprived of basic necessities such as food, water, shelter and medical care;
 - The individual is indebted with no possibility of repaying the debt; and
 - The individual lacks access to identity documents such as a state identification card, driver's license, or passport.

See:

- *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, Module 2, 2009; available in [English](#).
- *Screening Tools for Victims of Trafficking*, US Department of Health and Human Services; available in [English](#).

Promising Practices: In some countries, state and local governments have taken steps to proactively identify victims among vulnerable populations, including women and children in the sex industry. For example, in Austria, “the government reported that it made proactive efforts to identify trafficking victims among Austria’s sizable, legal commercial sex sector.” (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 69, 2009) In New York, USA, the state legislature enacted a law which provides minors who are identified as vulnerable to sexual exploitation with the services and assistance they need to escape the exploitation. (See: [Safe Harbor for Exploited Youth Act](#), New York, USA, 2008) The government of Alberta, Canada enacted the “Protection of Sexually Exploited Children Act” in 2000 to ensure that children involved in prostitution are considered victims and provided with services. At the same time, the Alberta law holds offenders accountable by charging those who exploit children in prostitution with the offense of child abuse. Convicted offenders are imprisoned and fined if convicted. (See: Alberta, Canada; [Protection of Sexually Exploited Children Act, R.S.A. 2000](#))

- Drafters should ensure that the law does not require verification of trafficking in order to receive services. Rather, victims must be identified, but need not be verified. (See: [UNHCR The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs](#), para. 22)

Reflection period

- Sex trafficking laws should include a reflection and recovery period for trafficking victims during which time they are eligible to receive services and benefits regardless of their immigration or other status, or their ability or willingness to cooperate with law enforcement and prosecutors. (See: [U.N.O.D.C Model Law, Art. 18](#)) In the United States, for example, [immigration remedies](#) for trafficking victims are conditioned on victims willingness to cooperate with law enforcement. Without a reflection period, this requirement is unduly harsh on victims who are suffering the traumatic effects of trafficking.
- In Australia, the government recently amended the national human trafficking protection scheme to remove the requirement for foreign national victims to cooperate with law enforcement during the initial 45 day rest and recovery period. In addition, those who are willing, but unable to participate in the criminal

justice process may also be eligible for an additional 45 days of assistance. (See: [Australian Government Anti-People Trafficking Strategy](#), 2009)

- Module 3 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#) discusses the psychological impact of the trafficking experience and its effect on the ability of victims to participate in the investigation, prosecution and criminal proceedings against the sex trafficker. Victims have experienced violence, abuse, and multiple ongoing traumas. (See: [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 3, 2009) The trauma of the trafficking experience underscores the importance of the reflection and recovery period.
- The Council of Europe Convention on Action Against Trafficking in Human Beings provides for a reflection period of at least thirty days for all trafficked victims when there are “reasonable grounds to believe that the person concerned is a victim.” (See: [Council of Europe Convention on Action Against Trafficking in Human Beings](#), Art. 13)
- This period affords potentially trafficked persons time to “recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.” In a study of the impact of trafficking on women’s health, police officers reported that the reflection period can bolster women’s ability to participate in criminal proceedings against their trafficker.

Promising Practices: Several countries have provided for reflection periods in their sex trafficking laws. These reflection periods range from the recommended thirty days in the Council of Europe Trafficking Convention to one-hundred and eighty days in Canada and Norway. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 99, 229, 2009) Spain provides for a thirty day reflection period, as does Sweden. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 263, 270, 2009) Denmark provides for a thirty to ninety day reflection period. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 121, 2009) The United Kingdom provides for a forty-five day reflection period. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 294, 2009) The Czech Republic provides for an automatic sixty days. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 120, 2009)

CASE STUDY: In Norway, “victims are permitted to stay in the country without conditions during a six-month reflection period in order to receive assistance; 40 victims benefited from the reflection period in 2008 compared to 30 in 2007. After the reflection period, victims can apply for one-year residency permits; in 2008, 15 victims received one-year residency permits. The government encouraged victims to participate in trafficking investigations and prosecutions. Trafficking victims were not penalized during the reporting period for unlawful acts committed as a direct result of their being trafficked.” (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 229, 2009)

According to researcher Anette Brunovskis at the Institute of Applied International Studies, “This period can be further extended with one more year, if the victim is participating in a police investigation or court case. There are no conditions attached to the initial six months of the reflection period. Further, while the Danish reflection period consists of a delay in travel deadline, the Norwegian reflection period is a temporary residence permit, and also includes a work permit. This is a potentially important element as it can ease the transition for trafficking victims when repatriated if they can document that they have actually had work, and also if they are able to bring some money with them upon return to their country of origin. However, as of yet it has proven difficult to realise the goal of providing trafficking victims with jobs. Still, so far the reflection period has worked quite well, and has been accepted by 27 victims so far this year; the current reflection period framework was put into place in November 2006. Norway formerly had a reflection period that was more like the Danish one, where victims of trafficking were allowed 45 days to consider their options, but in the two years this was in function, only one woman chose this option, and it was therefore not considered a particularly efficient tool.” (See: [Social Aspects of Human Trafficking](#), Anette Brunovskis, Institute of Applied International Studies, Comment Paper of Norway, Paragraph 2.2, 2007)

Provision of basic benefits and services

- Drafters should include provisions addressing benefits and services for the physical, psychological and social needs of trafficking victims. (See: [UN Trafficking Protocol, Art.6, para.3](#); [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 3.9, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Protections for Trafficking Victims Proposed Language, 6, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division D, 2005)
- Module 3 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#) discusses the psychological impact of the trafficking experience and its effect on trafficking victims. (See: [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 3, 2009)
- Benefits and services should include case management, housing, healthcare, language interpretation (as needed), legal services, and educational and training opportunities. In 2008 and 2009, the Bulgarian “Animus Association” created vocational training programs recognizing the importance of reintegrating trafficking victims into the economy. (See: Response to outreach letter by the “[Animus Association](#),” February 2010)
- Housing services should include emergency, transitional and permanent housing facilities. Healthcare services should address the trafficking victims’ pre-existing health issues and the immediate and long-term consequences of the trafficking experience, including substance abuse and chemical dependency treatment. Trafficking victims should be provided access to legal services, including both immigration and criminal defense attorneys. (See: [Sex Trafficking Needs Assessment for the State of Minnesota, Recommendation 2.1](#), 2008)

CASE STUDY: In Albania, the non-governmental organization “Different & Equal” published a report in June 2009 entitled “[Study on Social-Economic Reintegration of Victims of Trafficking in Albania](#),” which was based on interviews with trafficking victim service providers and trafficking victims themselves. The study also relied upon secondary research. The report summarized the two primary types of assistance available to trafficking victims in Albania, which includes both residential and non-residential programs.

The Albanian government created the National Reception Center for Victims of Trafficking (NRCVT), which provides secure housing to those who have been or are at risk of being trafficked. Another reception center called “Life and Hope” is located on the border with Greece and provides assistance for a period of seven to ten days for those arriving at the border. The non-governmental organizations “Different & Equal”, “Vatra”, and “Another Vision” provide independent or semi-independent housing. In addition, these organizations recognize the importance of both transitional and long-term housing and assistance by providing assistance in three phases: initial assistance to address the trafficking victim’s immediate needs; mid-term assistance to support the trafficking victims in creating a semi-independent life; and long-term assistance to reintegrate the trafficking victim into the community, but with monitoring and follow-up support. Non-residential assistance from non-governmental organizations and government institutions is also available to trafficking victims and includes: legal assistance; psychological counseling; employment assistance; medical assistance; and more.

The non-governmental organizations mentioned here have joined with the NRCVT to create a National Coalition of Albanian Shelters (NCASh) and to develop standards for providing assistance to trafficking victims. Other positive developments mentioned in the report include more formalized cooperation mechanisms based on memorandums of understanding between the National Anti-Trafficking Coordination Office and non-governmental organizations; a System of Total Information Management (TIM); a Commission for Data Protection; training on human trafficking for municipalities; and a program that provides micro-loans to trafficking victim’s business enterprises.

Although a great deal of progress has been made in Albania, the June 2009 report contained a number of recommendations for improving the response to trafficking including both continued government and also private funding of housing and shelters, financial compensation for victims provided by a state fund, decentralization and localization of support for victims, increased attention to employment for victims and to monitoring employers to ensure they aren’t exploiting workers, free health services for victims, witness protection, and attention to the children of trafficking victims, among other recommendations. (See: Response from Different & Equal, February 2010; [Study on Social-Economic Reintegration of Victims of Trafficking in Albania](#), 2009)

- Benefits and services should be provided whether or not trafficking victims participate in the investigation and prosecution of the suspected trafficker. Services should also be provided regardless of immigration status. (See: [UN Trafficking Protocol, Art. 6, paras. 2-4](#)) Services should begin once a trafficking victim is identified; continue for the duration of any criminal, civil or other actions against suspected traffickers; and last until the trafficking victim has recovered. (See: [Sex Trafficking Needs Assessment for the State of Minnesota, Recommendation 2.1](#), 2008)
- The government should dedicate funding for benefits and services, which may be granted to non-governmental organizations equipped to provide such assistance to trafficking victims. Several countries have dedicated such funds. The Czech Republic allocated \$283,000 to non-governmental organizations to provide comprehensive assistance and shelter to 76 victims in 2008. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 120, 2009) The United Kingdom directed \$1.95 million to a sex trafficking victim shelter. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 294, 2009) In Denmark, the government directed almost \$1.7 million to non-governmental organizations to offer medical and legal assistance, rehabilitative counseling and shelter to victims. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 121, 2009) The Republic of Korea provided \$10.9 million for victim assistance to counseling centers, group homes and shelters providing medical and legal assistance, counseling and occupational training to victims. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 177-178, 2009)

Promising Practice: In its 2006 report to the CEDAW Committee, Serbia noted that it had set up a “Safe Home for Victims of Human Trade” in February 2002. The shelter was providing accommodations to women and under-aged victims of trafficking. As of the date of its report, the shelter had assisted 88 foreign nationals and 8 citizens. (See: [Initial Report of Serbia, Committee on the Elimination of Discrimination Against Women](#), 30, paragraph 158, 2006)

Crime victim rights

- Sex trafficking laws must either reference existing crime victim rights provisions in other national or local laws or establish an independent provision defining the rights of a trafficking victim. At a minimum, those rights should include those enumerated in the “Bill of Rights for Victims of Trafficking”:
 - The right to safety
 - The right to privacy
 - The right to information
 - The right to legal representation
 - The right to be heard in court
 - The right to compensation for damages
 - The right to medical assistance
 - The right to social assistance
 - The right to seek residence
 - The right to return

(See: [The Protection Project of Johns Hopkins University School for Advanced International Studies](#) (SAIS))

- Module 11 of the UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners provides practical suggestions for how practitioners can support victim rights and needs throughout the process recognizing that facilitating victims’ recovery enables them to participate more effectively in the criminal justice process. See: Guidelines for the use of interpreters are available in Module 10 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 11, 2009.
- Crime victim rights are explicitly recognized and crime victims are defined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. In 2002, the expert group convened by the United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime to discuss the trafficking of women and girls, noted that:

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, a person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. This definition implies that the protection of the rights of the trafficked person should be ensured because she/he is a victim, not only when she/he acts as a witness or when the testimony leads to the arrest and conviction of the offenders.

(See: [Declaration of Basic Principles of Justice for Victims of Crime and Abuse, United Nations General Assembly Resolution](#), 29 November 1985)

- A provision regarding the right to be heard in court should include the “opportunity to present his or her views, needs, interests and concerns for consideration at appropriate states of any judicial or administrative proceedings

related to the offence, either directly or through his or her representative, without prejudice to the rights of the defence.” (See: [UNODC Model Law Against Trafficking in Persons, Art. 24](#))

- A provision regarding the right to privacy should include mandates for processing, storage and use of information about trafficking victims; the exchange of such information related to criminal investigations of suspected traffickers; the confidentiality of information shared between a victim and a professional; the gathering of such information from trafficking victims away from the public and media; the complete confidentiality of medical information gathered for the criminal case; and the non-disclosure of a trafficking victim’s name, address or other identifying information, including photographs. (See: [UNODC Model Law Against Trafficking in Persons, Art.25](#))
- A provision regarding the right to compensation for damages should include both restitution and compensation. Trafficking victims should be entitled to such compensation regardless of immigration status. If a government official committed the offence under actual or apparent State authority, the court may order the State to pay compensation to the victim. Restitution should include the “return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.” (See: [UNODC Model Law Against Trafficking in Persons, Art. 28](#))
- Compensation should be given priority over a fine. The goal of compensation must be reparation and should include the costs of medical, physical, psychological or psychiatric treatment; costs of physical and occupational therapy or rehabilitation; costs of necessary transportation, temporary childcare, temporary housing or movement of the victim to a place of temporary safe residence; lost income and due wages; legal fees and other costs or expenses incurred related to participation in the criminal investigation and prosecution process; payment for non-material damages; and any other costs or losses incurred as a result of being trafficked and reasonably assessed by the court. If a government official committed the offence under actual or apparent State authority, the court may order the State to pay compensation to the victim. (See: [UNODC Model Law Against Trafficking in Persons, Art. 28](#))
- Romania enacted both an anti-trafficking law and a crime victim rights law. Together these laws provide for many of the rights identified in the “Bill of Rights for Victims of Trafficking.” (See: [On Certain Measures to Ensure the Protection of Victims of Crime](#), 2004; LAW 678/2001 [On Preventing and Combating Trafficking in Human Beings](#) amended and supplemented by GEO no. 143/2002, Law 39/2003, GEO no. 79/2005)

Crime victim-witness protection

- Sex trafficking laws should not only ensure that trafficking victims are granted rights, but are also affirmatively granted protection from harm or the threat of harm during proceedings against their traffickers. Other witnesses, family members of and persons close to trafficking victims must also be protected from retaliation and intimidation. These protections should be in place before, during and after the legal proceedings.
- Those responsible for victim and witness protection should consult Module 12 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), which describes appropriate protection measures to be taken by first responders, investigators, and the judicial system in human trafficking cases. (See: [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), 2009)
- Before interviewing trafficking victims and potential witnesses, law enforcement and first responders should also consult Modules 8 (adults), 9 (children), and 10 (use of interpreters) [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), which provide suggestions for how to interview trafficking victims, including interview checklists. (See: [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Modules 8-10, 2009)
- Victims and witnesses should not be deported to their home country if they are likely to be harmed or threatened there. Governments must ensure safe return or relocation to a third country if the former is not possible. (See: [Annotated Guide to the Complete UN Trafficking Protocol](#), Global Rights, Art. 24, 2002; [UN Trafficking Protocol](#), Arts. 6 & 7; [UNODC Model Law Against Trafficking in Persons](#), Arts. 21-23)
- Sex trafficking laws must ensure the safety of all witnesses, including when testimony is given. Drafters should review evidentiary rules to assess whether testimony may be given through the use of communications technology to protect victims from being re-traumatized and witnesses from retaliation. In some countries, such audio- or video-taped testimony is already allowed in cases of child sexual abuse. In such countries, those standards should be applied to children who are trafficked for the purposes of sexual exploitation.

Promising Practices: In Belgium, the rules of criminal procedure allow for the audiovisual recording of the interview of the minor who consents to the recording by a specifically trained police officer as long as the minor is 12 years or older. (See: [Monitoring State Progress to Protect Children and Young People from Trafficking for Sexual Purposes report](#) by ECPAT International, 36, 2010) In Canada, the government has provided for the use of closed circuit television testimony to allow victims to provide testimony in a more victim-sensitive manner. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 100, 2009)

- Finally, drafters should consider including provisions in the law to permit relocation of witnesses and victims. (See: [Annotated Guide to the Complete UN Trafficking Protocol](#), Global Rights, Art. 24, 2002)

Civil remedies for trafficking victims

- Drafters should include provisions for restitution, asset forfeiture, civil liability or causes of action for sex trafficking, a crime victims' rehabilitation fund, orders for protection or harassment restraining orders, protections for privacy, and a victim-advocate caseworker privilege.
- Drafters should review Module 13 of the [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), which explains the different forms of compensation for victims: through the assets of offenders (civil liability) or through state-funded compensation schemes. (See: [UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners](#), Module 13, 2009)

Note: While restitution, asset forfeiture and crime victims' rehabilitation funds are typically part of the criminal law scheme addressing sex trafficking, they are included here because they should be reviewed with provisions such as civil liability claims and other means of compensating victims for harm.

Restitution

- Drafters should include a provision for restitution to trafficking victims where none is already included in the criminal code or other laws. Restitution should be one of the many criminal sanctions imposed upon the trafficker upon conviction. Judges should give priority to restitution over fines. Restitution should include:
 - Return of property;
 - Payment for the harm or loss suffered;
 - Reimbursement for expenses incurred as a result of the victimization, provision of services and restoration of rights, including:
 - Costs of medical, physical, psychological or psychiatric treatment;
 - Costs of physical and occupational therapy or rehabilitation;
 - Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a safe residence;
 - Lost income and due wages according to national law and regulation regarding wages;
 - Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
 - Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her;
 - In the case of an offence resulting in death, or bodily injury that results in death, the costs and expenses of necessary funeral and related services; and
 - Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by the court.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 28, 2009; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 1.8, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Mandatory Restitution to Victims Proposed Language, 4, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division C, 2005)

- Drafters may also consult language in the [State Model Law on Protection for Victims of Human Trafficking](#), Division C related to the procedure for an order of restitution and enforcement of the restitution order.
- When a trafficking victim cannot be fully compensated by a convicted offender, the government should make funds available through a crime victim's restoration fund.

Crime victim's restoration fund

- Drafters should include a provision for a crime victim's restoration fund where none is already included in the criminal code or other laws. Funds should be administered according to existing regulations. Where regulations are not in place, drafters should consult Article 29 of the [UNODC Model Law Against Trafficking in Persons](#).
- Key regulations include how victims may apply for restoration funds, the basis for calculation of payments, the circumstances under which compensation may be paid, and the process for appealing a decision. Victims should be eligible for compensation regardless of whether the offender is identified, arrested or convicted. A victim's immigration status, return to his/her home country or the absence of the victim from the jurisdiction shall not prevent payment of compensation from the crime victim's restoration fund.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 29, 2009; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 3.5, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Providing Eligibility for Benefits under the State Crime Victims Fund Proposed Language, 9, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division D, Section 10, 2005)

- Ghana's Human Trafficking Act of 2005 contains provisions providing for the establishment of a "Human Trafficking Fund," and also sets out the objectives of, management of, payment from, and accounting for the fund.

Establishment of Fund

20. There is established by this Act a Human Trafficking Fund.

Sources of money for the fund

21. The moneys for the Fund include
- (a) voluntary contributions to the Fund from individuals, Organisations and the private sector,
 - (b) the amount of money that Parliament may approve for payment into the Fund,

- (c) grants from bilateral and multilateral sources,
- (d) proceeds from the confiscation of property connected with trafficking, and
- (e) money from any other source approved by the Minister responsible for Finance.

Objective of the Fund

22. The moneys of the Fund shall be applied as follows:

- (a) towards the basic material support of victims of trafficking;
- (b) for the skills training of victims of trafficking;
- (c) for tracing the families of victims of trafficking;
- (d) for any matter connected with the rescue, rehabilitation and reintegration of victims of trafficking in their best interest;
- (e) towards the construction of reception shelters for trafficked persons in the districts; and
- (f) for training and capacity building to persons connected with rescue, rehabilitation and reintegration.

Management of the Fund

23. (1) The Fund shall be managed by the Ministry.

(2) Moneys for the Fund shall be paid into a bank account opened for the purpose by the Ministry with the approval of the Minister for Finance.

Payment from the Fund

24. (1) Moneys issued from the Fund shall be by cheque signed by the accountant of the Ministry and any two of the following:

- (a) the Chief Director of the Ministry;
- (b) the secretary of the Management Board established under section 28, and
- (c) one other member of the Management Board nominated by the members
of the Management Board.

(2) The Management Board shall develop guidelines for disbursements from the Fund.

Accounts and audit

25. (1) The Ministry shall keep books of account of the Fund and proper records in relation to them, in the form approved by the Auditor-General.

(2) The Ministry shall submit the accounts of the Fund to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(See: [Human Trafficking Act of Ghana](#), 2005.)

Asset forfeiture

- Drafters should ensure that trafficker's assets, including overseas assets, may be forfeited and the proceeds from the sale of these assets be directed toward the trafficking victim's rehabilitation. (See: [UNODC Model Law Against Trafficking in Persons](#), Art. 29, 2009) Drafters should clarify that both tangible property and cash may be forfeited and re-directed toward victim rehabilitation funds. Seized assets should be used first in paying restitution to victims and secondly in paying damages awarded to a victim in a civil action.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 29, 2009; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 1.9, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Asset Forfeiture, 4, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division B, Section 10, 2005)

- The Belgian Law related to trafficking in human beings allows for forfeiture of the assets of sex traffickers consistent with forfeiture provisions in its criminal code. The Belgian law states "The special confiscation provided for in Article 32(1) of the Criminal Code may be applied even where ownership of the objects in question does not lie with the convicted person." (See: [Belgian Law containing provisions to combat trafficking in human beings and child pornography](#), Chapter 1, Art. 1 amending Art. 77bis §1, 1995)
- The Israeli "Prohibition of Trafficking in Persons" law also contains a forfeiture provision:
377D. Forfeiture
(a) In this section and in section 377E –
"Combating Criminal Organizations Law" means the Combating Criminal Organizations Law, 5763 – 20032;
"victim of an offense" means a person who is directly injured by an offense and a family member of a person who died as a result of the offense;
"offense" means the offense of holding under conditions of slavery according to section 375A and the offense of trafficking in persons according to section 377A;
"property" and "property related to an offense" have the same meaning as in the Combating Criminal Organizations Law.
(b) The provisions of sections 5 to 33 of the Combating Criminal Organizations Law, except for sections 8, 14(2) and 31 of the said law, shall apply to the forfeiture of property related to an offense, as the case may be and mutatis mutandis.
(c) Subject to the provisions of subsection (b), property that is subject to forfeiture according to the provisions of this part and also according to the provisions of the Combating Criminal Organizations Law or the Prohibition of Money Laundering Law, 5760 – 2000, shall be forfeited according to the provisions of this Law,

unless there are special reasons justifying that the forfeiture of the property not be carried out according to the provisions of this part.

(d) The Minister of Justice, with the approval of the Constitution, Law and Justice Committee of the Knesset, shall promulgate in regulations provisions regarding procedural rules in the matter of an application for a forfeiture order in a criminal or civil proceeding, proceedings for the hearing of objections to the forfeiture, application for steps to safeguard property, temporary relief, rehearing, appeal, and also provisions on the ways to effectuate the forfeiture, administer the assets and give notice to persons claiming right in the property.

(See: *Israel Prohibition of Trafficking in Persons Law*, 2006; available in [English](#))

Civil liability

Drafters should create a right for trafficking victims or their legal guardian, family member or representative to sue their traffickers for damages as a result of being trafficked. (See: [UNODC Model Law Against Trafficking in Persons](#), Art. 27, 2009) The civil right of action should include:

- Actual, punitive and compensatory damages, or any combination of those;
- Injunctive relief and other appropriate relief;
- Attorney's fees and costs;
- A statute of limitations that does not start until a minor reaches the age of majority or a ten year statute of limitations for an adult victim, and the statute of limitations should be suspended when:
 - A trafficking victim becomes disabled;
 - A trafficking victim could not have reasonably discovered the right due to the circumstances of the trafficking situation;
- A provision stating that the defendant may not assert a defense of the running of the statute of limitations when the expiration is due to conduct by the defendant;
- A provision stating that the victim's immigration status, return to his/her home country or the absence of the victim from the jurisdiction shall not prevent relief under the civil right of action; and
- A provision stating that the civil action shall be stayed during the pendency of any criminal action arising from the same occurrence in which the claimant is a victim.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 27, 2009; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 3.1, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Providing for Private Right of Action Proposed Language, 9, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division C, Section 6, 2005)

The State of California in the United States has enacted a civil liability law which has been successfully used to secure damage awards for the harm suffered at the hands of sex traffickers.

California Civil Code: Civil Action

52.5. (a) A victim of human trafficking, as defined in Section 236.1 of the Penal Code, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) In addition to the remedies specified herein, in any action under subdivision (a), the plaintiff may be awarded up to three times his or her actual damages or ten thousand dollars (\$10,000), whichever is greater. In addition, punitive damages may also be awarded upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of human trafficking.

(c) An action brought pursuant to this section shall be commenced within five years of the date on which the trafficking victim was freed from the trafficking situation, or if the victim was a minor when the act of human trafficking against the victim occurred, within eight years after the date the plaintiff attains the age of majority.

(d) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitation for this action.

(1) Disability includes being a minor, insanity, imprisonment, or other incapacity or incompetence.

(2) The statute of limitations shall not run against an incompetent or minor plaintiff simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his or her disability ceases.

(3) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff.

(4) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.

(5) The running of the statute of limitations is postponed during the pendency of any criminal proceedings against the victim.

(e) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(f) A prevailing plaintiff may also be awarded reasonable attorney's fees and litigation costs including, but not limited to, expert witness fees and expenses as part of the costs.

(g) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13963 of the Government Code.

(h) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. As used in this section, a "criminal action" includes investigation and prosecution, and is pending until a final adjudication in the trial court, or dismissal. (See: [California Civil Code](#), Section 52.5, 2009)

Ensuring privacy and identity of victims

Drafters should ensure that special provisions for the protection of trafficking victim's privacy and identity are included in the law. Such protections should include:

- The processing, storage and use of personal data exclusively for the purposes for which they were compiled according to existing laws and regulations;
- Protocols for the sharing of information between agencies involved in the victim identification and assistance with full respect for the protection of privacy of the victim;
- The confidentiality of information exchanged between a victim and professional providing medical, psychological, legal or other assistance services shall be confidential and shall not be exchanged with third persons without the consent of the victim;
- Interviews with the victim during court proceedings should be conducted with respect for the victim's privacy and away from the public and media;
- The confidentiality of the results of medical examinations of the victim and their use only for criminal investigation and prosecution; and
- The prohibition against public disclosure or publication of the victim's name, address, or other identifying information including photographs.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 25, 2009; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 3.6, 2006; [State Model Law on Protection for Victims of Human Trafficking](#), Division D, Section 4, 2005)

Orders for protection, harassment restraining orders and other court orders

See [Domestic Violence and Sexual Assault](#) sections of this Knowledge Module.

Immigration provisions

Drafters should ensure that the sex trafficking law contains immigration relief for trafficking victims without legal status in the destination country. The forms should include, but not be limited to: A recovery and [reflection period](#); protection from summary deportation, eligibility for temporary and permanent legal status; eligibility for refugee status if the trafficking victim meets the grounds of the Refugee Convention; a right to safe return, and resettlement or repatriation; and a prohibition against causing statelessness of any trafficking victim.

CASE STUDY: As of July 1, 2009 Australia enacted changes to its “People Trafficking Visa Framework.” Non-governmental organizations urged such changes following a 2008 National Round Table on People Trafficking. The changes included:

- De-linking victim support from visas, which allows any valid visa holder to access support rather than needing to apply for a specific trafficking visa to access support.
- Extension of a temporary visa to all suspected trafficking victims who hold a valid visa for up to 45 days whether or not the individual is willing or able to assist with the investigation and prosecution of the trafficker. Undocumented individuals may be granted a Bridging F visa for up to 45 days.
- Extension of support for an additional 45 days to trafficking victims who are willing, but unable to participate in the criminal justice process. Suspected trafficking victims who do not hold valid visas may be granted a second Bridging F visa for up to 45 days.
- Formalized assistance in the form of a 20 day transition period for those victims leaving the program.
- Discontinuing the temporary witness protection visa for trafficking victims in favor of a permanent witness protection visa for trafficking victims and their immediate family members.
- Lowering the requirement for a trafficking victim to make a “significant contribution” to making a “contribution” in order to be issued a Witness Protection Certificate and be eligible for a Witness Protection visa.
- Inviting trafficking victims and their immediate family members to apply for Witness Protection visas earlier in the criminal justice process rather than after prosecution ended.

(See: [Australian Government Anti-Trafficking Strategy Fact Sheet](#), June 2009; [Australia: Government changes puts rights of trafficked people first](#), Asia Pacific Forum, 17 June 2009; [Annual Report of the Australian Human Rights Commission](#), Section 10.2.17, 2008-2009)

Protection from summary deportation & eligibility for temporary and permanent legal status

- Drafters should include a provision in the law declaring that trafficking victims are to be protected from “summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.” Trafficking victims who are present in a destination country as a direct consequence of their situation as a trafficked person should not be deported. (See: [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Guideline 4(6), 2002)

“No victim of trafficking [should be] removed from the host country if there is a reasonable likelihood that she will be re-trafficked or subjected to other forms of serious harm, irrespective of whether she decides to cooperate in a prosecution.”

(See: Report of the Working Group on Contemporary Forms of Slavery, E/CN.4/Sub.2/2004/36, 20 July 2004, Section VII Recommendations adopted at the 29th session, p. 16, paragraph 29)

- A related issue is whether local law enforcement must report undocumented individuals to federal immigration officials responsible for deportation. The [State Model Law on Protection for Victims of Human Trafficking](#) recommends that sex trafficking laws contain a non-referral provision. (See: [State Model Law on Protection for Victims of Human Trafficking](#), Division E, Section 2, 2005) Research demonstrates that sex traffickers often use the threat of deportation as a means of control over the trafficking victim. If governments also have the power to deport trafficking victims, the likelihood of trafficking victims to come forward will diminish significantly.
- Drafters should provide for temporary and permanent legal status. The law should provide for temporary residency permits, with the option to renew, for the established length of the reflection period during which time the victim need not cooperate or participate in the criminal investigation of her sex trafficker. The temporary residence permit should provide the victim with assistance, benefits, services and protection. Where the trafficking victim is a child, the temporary or permanent residency permit should be issued if it is in “the best interest of the child.” The trafficking victim should not be denied a temporary or permanent residency permit because she no longer has her passport or other identity documents.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 31, 2009; [State Model Law on Protection for Victims of Human Trafficking](#), Division E, Section 1, 2005; [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Principle 9 and Guideline 4(6), 2002)

Eligibility for refugee status where the trafficked person has a well-founded fear of persecution linked to one of the Refugee Convention's grounds

Drafters should include a provision which allows the victim and her accompanying dependents to apply for refugee status or permanent residence status on humanitarian grounds. (See: [UNODC Model Law Against Trafficking in Persons](#), Art. 31, 2009; [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Principle 9 and Guideline 2(7), 2002; [UNHCR Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked](#), Section II (paragraphs 12-18), 2006)

Ensuring the safe return, repatriation and/or resettlement of trafficked persons in their home or third countries

- Drafter should include provisions on the return of trafficking victims to the country of their nationality provided that the safety of the victim may be assured including “no danger of retaliation or other harm the trafficked person could face upon returning home, such as arrest for leaving the country or working in prostitution abroad, when these are actions criminalized in the country of origin.” (See: [UNODC Model Law Against Trafficking in Persons](#), Art. 32, 2009)
- The mandate to ensure safe return is contained in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and should be read in conjunction with the mandate against statelessness. If a trafficking victim is not allowed safe return, the victim is effectively rendered stateless and denied the protection of that country. (See: [UNHCR Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked](#), Section III(43), 15, 2006)

Prohibiting actions that would cause statelessness

Drafters should include provisions specifying that a country must avoid actions that would result in statelessness. This includes the obligation to avoid situations where statelessness may arise by default or neglect, except where nationality was acquired fraudulently. These principles are consistent with the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. While trafficking victims are not *per se* stateless, they may have had their identity documents seized by their traffickers making it more difficult to prove their citizenship. (See: [UNHCR Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked](#), Section III(41-42), 15, 2006)

Administrative and regulatory provisions

Drafters should ensure that the administrative and regulatory aspects of the sex trafficking law are addressed through provisions addressing training, public awareness, task forces, data collection, the duties of law enforcement, prosecutors, judges, service providers and advocates; and the appropriation of funds to implement such provisions.

National Action Plans

- National action plans are one component of a comprehensive national anti-trafficking program which should include: (1) a national action plan; (2) a national rapporteur; and (3) a national referral mechanism. A national referral mechanism is a coordinated strategic partnership between government and non-governmental organizations that links trafficking victims with services and ensures that their rights are protected. (See: [Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms](#), 2008; [National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook](#), 2004. Additional detailed [Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response](#) are available from the [International Centre for Migration Policy Development](#))
- Many countries have created national action plans to outline the intended approach to anti-trafficking activities. These plans typically address prevention of human trafficking, protection of trafficking victims and prosecution of human traffickers. National action plans may be viewed as an expression of a country's commitment to undertake obligations under international, regional and national law. The action plan may set out goals, objectives and deadlines for activities related to prevention, protection and prosecution. (See: [China National Plan of Action on Combating Trafficking in Women and Children](#) (2008-2012), 2009; [Republic of Moldova National Plan to Prevent and Combat Trafficking in Human Beings](#), 2005; [United Kingdom Action Plan on Tackling Human Trafficking](#), 2007)
- A United Nations treaty body or a regional human rights treaty body may review a country's progress in taking appropriate measures to address human trafficking against its own national action plan. The Committee on the Elimination of Discrimination against Women reviews a country's compliance with international human rights obligations related to human trafficking and makes recommendations. When the Committee reviewed the sixth periodic report of Brazil in 2007, it noted that Brazil did not yet have a national action plan on trafficking in persons and recommended that one be elaborated. ([Concluding Comments of the Committee on the Elimination of Discrimination against Women: Brazil](#), 2007) The Committee commended the Republic of Moldova for adopting a national action plan, but expressed concern that the national plan be adequately funded and its implementation not rely too heavily on non-governmental organizations. ([Concluding Comments of the Committee on the Elimination of Discrimination against Women: Republic of Moldova](#), 2006)

- The Special Rapporteur on trafficking in persons, especially women and children will also document whether a country has a national action plan when conducting a country visit and report assessing compliance with international human rights standards related to human trafficking. (See: [Report of the Special Rapporteur on trafficking in persons, especially women and children: Mission to Bahrain, Oman and Qatar, paragraph 31, 2007](#))

Training

- Drafters should ensure that the sex trafficking law contains provisions related to the creation of training programs for law enforcement, prosecutors, judges, child protection officials, immigration and other relevant officials. Training may either be mandatory or not, keeping in mind that unfunded mandates may prove to be more problematic than effective. Training should focus on:
 - Relevant international, national and local laws on sex trafficking;
 - Methods used in preventing such trafficking;
 - Prosecuting the traffickers; and
 - Protecting the rights of the victims, including protecting the victims from the traffickers.
- The training should incorporate a human rights perspective and be sensitive to issues of culture, language, gender, race, national origin, and age. Training should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society and be carried out by a coalition of such organizations where possible. Training should emphasize a victim-centered approach, treating trafficking victims as the crime victims they are rather than as criminals. (See: [Annotated Guide to the Complete UN Trafficking Protocol](#), International Human Rights Law Group, Art. 10, 2002; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 2.3, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Implementation and Enforcement: Mandatory Training for Law Enforcement Personnel Proposed Language, 5, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division F, Section 1, 2005)
- The Moldovan Law on Preventing and Combating Trafficking in Human Beings (2005) contains a provision for training law enforcement and other professionals tasked with preventing and combating human trafficking.

Article 14. Vocational Training and Education of Personnel

(1) The state shall guarantee vocational training and education of employees in law enforcement authorities, migration bodies, and other authorities in the field of preventing and combating trafficking in human beings.

(2) Such vocational training and education of personnel shall be based on the methods of preventing and combating trafficking in human beings, the most advanced techniques for conducting criminal investigation in cases of trafficking in human beings, including trafficking in children, the observance of the rights

and interests of victims of trafficking and on the most advanced forms of their protection.

(3) The vocational training and education of personnel shall comprise methods and forms of collaboration of public administration authorities with representations of international and regional organizations in the Republic of Moldova, non-governmental organizations, other institutions and representatives of civil society, as well as methods and forms of cooperation and collaboration of public administration authorities, organizations and institutions of the Republic of Moldova with interested authorities, organizations and institutions of other states and with international and regional organizations.

(See: [Moldovan Law on Preventing and Combating Trafficking in Human Beings](#), 2005)

Building public awareness to prevent sex trafficking and sexual exploitation

- Drafters should create provisions to address the need for public awareness that sex trafficking and prostitution are forms of violence against women and girls. When women and girls are trafficked or prostituted, their human rights are violated. Drafters should also create provisions to address the need for general public awareness about the risks of victimization, the dynamics of sex trafficking, including the demand for the sale of women and girls for sex, methods for reporting suspected recruitment activities, and information on hotlines and services.

Promising Practice: According to the [International Center for Criminal Law Reform and Criminal Justice Policy](#), the Division for Gender Equality in the Ministry of Integration and Gender Equality in the Swedish Government educates parliamentarians, government representatives, journalists, non-governmental organizations, and students about trafficking in human beings. This division also educates teachers and students in high schools by screening anti-trafficking films. The educational materials address issues of human trafficking, violence against women and girls, pornography, and prostitution. The Minister of Integration and Gender Equality of Sweden published a report in 2009 highlighting the government efforts taken “[Against Prostitution and Human Trafficking for Sexual Purposes](#).” The report details progress toward the 2008 national action plan priority areas, including preventive work. The Swedish government outlines ten measures being taken to strengthen preventive work, which include:

- Evaluation and enhancement of measures directed at purchasers of sexual services
- Evaluation and enhancement of efforts on behalf of people in prostitution
- Greater focus on preventive work among young people
- Training for staff working with young people
- Methodological material for activities targeting young people
- Measures on behalf of women in penal care
- Further training for staff in compulsory and upper secondary schools
- Ethical guidelines in public administration
- Support for the activities of NGOs

(See: [Against Prostitution and Human Trafficking for Sexual Purposes](#), 2009; [Action Plan Against Prostitution and Human Trafficking for Sexual Purposes](#), 2008)

- The [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#) recommends that the following components be included in public awareness programs:
 - (1) Information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;
 - (2) Information about the risks of engaging in commercial sex and possible punishment; and
 - (3) Information about victims’ rights;
 - (4) Methods for reporting suspected recruitment activities; and
 - (5) Information on hotlines and available victims’ services.

- Article 34 of the [UNODC Model Law Against Trafficking in Persons](#) suggests that awareness should be raised about the following aspects of the demand:
 - Products and services that are produced by exploitative and forced labour; to regulate, register and license private recruitment agencies;
 - Sensitizing employers
 - Not to engage victims of trafficking or forced labour in their supply chain, whether through subcontracting or directly in their production;
 - To enforce labour standards through labour inspections and other relevant means;
 - To support the organization of workers;
 - To increase the protection of the rights of migrant workers; and/or
 - To criminalize the use of services of victims of trafficking or forced labour.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 34, 2009; See also [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 2.4, 2006 and [2010 European Parliament Resolution on Preventing Trafficking in Human Beings](#))

- The [2005 Council of Europe Convention on Action against Trafficking in Human Beings](#) specifically enumerates measures to discourage demand:

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a. research on best practices, methods and strategies;
- b. raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c. target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- d. preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

(See: [2005 Council of Europe Convention on Action against Trafficking in Human Beings](#), Section 6)

- The Colombian Human Trafficking Law contains a provision addressing the issue of demand related to the prevention of human trafficking. Article 5 provides that “The Colombian State, through the National Government of its judicial and police, and national and territorial authorities, bring forward measures and campaigns and programs to prevent trafficking in persons, grounded in the protection of Human Rights, which take into account that demand is one of its root causes; consider the factors that increase the vulnerability to trafficking, including inequality, poverty and discrimination in all its forms, and reflect the cultural and ethnic diversity of potential victims.” (See: [Colombia Human Trafficking Law, Article 5](#), 2005 (Spanish))

Promising Practices: In Madrid, Spain, the public is educated about the demand through posters with the slogan “Because you pay, prostitution exists...Do not contribute to the perpetuation of 21st century slavery.” (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 263, 2009) In Bulgaria, the organization “Demetra” has taken on several educational projects beginning in 2005, which includes: Educating Burgas schools about the prevention of human trafficking, increasing the sensitivity of the general public about human trafficking of both adults and children, and educational programs for at risk children. (For more information, contact Demetra at demetra@unacs.bg)

CASE STUDY: A film called [Affected for Life](#) has been produced by the UNODC's Anti-Human Trafficking and Migrant Smuggling Unit together with [Danish Doc Production](#). The film debuted at the European Union Ministerial Conference "Towards Global EU Action Against Human Trafficking" in October 2009 and will be used in the United Kingdom by the [UK Human Trafficking Centre \(UKHTC\)](#) as a part of its [Blue Blindfold](#) campaign.

The video is available in both full-length and abbreviated versions in English, with forthcoming versions in Arabic, French, Russian and Spanish. A 23 minute version of the film targets prosecutors, judges and criminal justice system professionals. The shorter 13 minute version of the film is aimed at raising awareness of what human trafficking is and how it is defined. To watch the short 13 minute version of the film, click [here](#). To watch the long 23 minute version of the film, click [here](#). (See: [UNODC Anti-Human Trafficking Training Film](#), 2010)

- Human rights practitioners suggest additional research on strategies to reduce the demand is needed because prevention efforts that focus on education, communication, and information alone have not led to a significant decline in the numbers of sex trafficking victims. An approach which shifts the focus to countries where men consume the sexual services of trafficked women is needed. (See: [Trafficking in Human Beings and Sexual Exploitation: Preliminary Research on the Reduction of Demand](#), Human Rights without Frontiers, 2010)

Task forces and inter-agency cooperation

- Drafters should incorporate provisions into the sex trafficking law to establish national and local task forces dedicated to the four aspects of an effective response: Protection, Prosecution, Prevention and Partnerships. The [UNODC Model Law Against Trafficking in Persons](#) recommends that task forces should be charged with the following activities:
 - Establishing national and local inter-agency anti-trafficking task forces to be comprised of government officials and non-governmental representatives, including service providers;
 - Coordinating the implementation of the law, including:
 - Developing protocols and guidelines,
 - Developing a national (or local) plan of action, including a comprehensive set of measures for the prevention of trafficking, identification of, assistance to and protection of victims, including victims who are repatriated from another State to [name of State], the prosecution of traffickers and the training of relevant State and non-State agencies, as well as coordinate and monitor its implementation;
 - Develop, coordinate and monitor the implementation of a national referral mechanism to ensure the proper identification of, referral of, assistance to and protection of victims of trafficking in persons, including child victims, and to ensure that they receive adequate assistance while protecting their human rights;
 - Establish procedures to collect data and to promote research on the scale and nature of both domestic and transnational trafficking in persons and its forced labour and slavery-like outcomes, the factors that further and maintain trafficking in persons and best practices for the prevention of trafficking, for assistance to and protection of victims and the prosecution of traffickers;
 - Facilitate inter-agency and multidisciplinary cooperation between the various government agencies and between governmental and non-governmental agencies, including labour inspectors and other labour market actors;
 - Facilitate cooperation among countries of origin, transit and destination, and among regions and states within the country;
 - Act as a focal point for national institutions and other State and non-State actors, as well as international and local bodies and other actors, engaged in the prevention of trafficking in persons, the prosecution of traffickers and assistance to victims;
 - Analyze existing national and local laws for the adequacy and effectiveness in addressing sex trafficking and recommend amendments to improve their effectiveness; and

- Ensure that anti-trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the groups affected.
 - The Task Force shall issue an annual report on the progress of its activities, the number of victims assisted, including data on their age, sex and nationality and the services and/or benefits they received under this Law, the number of trafficking cases investigated and prosecuted, and the number of traffickers convicted.
 - All data collection shall respect the confidentiality of personal data of victims and the protection of their privacy.
- (See: [UNODC Model Law Against Trafficking in Persons](#), Art. 35, 2009; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 2.1, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Statewide Interagency Task Force, 10, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division F, Section 2, 2005)
- The [Moldovan Law on Preventing and Combating Trafficking in Human Beings](#) (2005) contains provisions for a National Committee for Combating Trafficking in Human Beings (Article 8) and its regulation (Regulation of the National Committee to Combat Trafficking in Human Beings). (See: [Moldovan Law on Preventing and Combating Trafficking in Human Beings](#), Article 8 and page 54 (2005)) The Committee on the Elimination of Discrimination against Women commended the Republic of Moldova both for adopting a national action plan and for forming a national committee, however expressed concern that the national plan be adequately funded and its implementation not rely too heavily on non-governmental organizations. (See: [Concluding Comments of the Committee on the Elimination of Discrimination against Women: Republic of Moldova](#), 2006)
 - In Bulgaria, governmental and non-governmental representatives joined together to create a National Referral Mechanism to provide protection and assistance to trafficking victims. The NRM brought together the National Commission for Combating Human Trafficking, La Strada International, the Matra Programme of the Dutch Government and the “Animus Association.” Through the NRM and other mechanisms, the “Animus Association” assisted 1,914 survivors of trafficking in 2008, and 2,629 in 2009. (See: Response to outreach letter by the [“Animus Association”](#), February 2010)

Data collection

Drafters should incorporate provisions into the sex trafficking law to collect and disseminate data on a regular basis. The [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#) recommends that federal, state and local governments:

- In cooperation with other appropriate authorities, collect and periodically publish statistical data on trafficking;
- Elicit the cooperation and assistance of other government agencies, non-governmental organizations, and other elements of civil society as appropriate to assist in the data collection required under the law;
- Make best efforts to collect information relevant to tracking progress on trafficking, including but not limited to:
 - Numbers of investigations, arrests, prosecutions, and successful convictions of traffickers and those committing trafficking-related crimes (pimping, pandering, procuring, maintaining a brothel, child pornography, visa fraud, document fraud, and other crimes related to trafficking);
 - The estimated number and demographic characteristics of persons engaged in violations of the criminal provisions defined in subsection 1.2 of this article as well as persons who purchase or receive commercial sex acts or sexually-explicit performances, or labor or services, performed by victims of trafficking in persons;
 - Statistics on the number of victims, including nationality, age, method of recruitment, and city, state and country of origin;
 - Trafficking routes and patterns (states or countries of origin, transit states or countries, and destination states or countries);
 - Methods of transportation (car, boat, plane, foot), if any transportation took place; and
 - Social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that lead to trafficking.

(See: [UNODC Model Law Against Trafficking in Persons](#), Art. 27, 2009; [Polaris Project Model Comprehensive State Legislation to Combat Trafficking in Persons](#), 2.2, 2006; [Model Provisions for State Anti-Trafficking Laws](#), Center for Women and Public Policy, Mandating a Statewide Assessment Proposed Language, 12, 2005; [State Model Law on Protection for Victims of Human Trafficking](#), Division F, Section 4, 2005)

Appropriations

- Drafters should consult with government attorneys experienced in drafting legislation to determine how best to incorporate a request for appropriations to fund anti-trafficking efforts into the law. The procedures for this request will vary from country to county. At a minimum, funding should be appropriated to carry out the purposes of the legislation: Protection, Prosecution, Prevention and Partnerships. An example of model language is contained in the [State Model Law on Protection for Victims of Human Trafficking](#), Division G, 2005.
- A number of countries have appropriated funds to anti-trafficking efforts. Sweden dedicated \$26 million to prevention, protection for victims, training, and screening mechanisms. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 270, 2009) The government of Spain funded its four-year national action plan in the amount of \$57 million. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 263, 2009)

Other related regulations

- Drafters should review laws and regulations related to [prostitution and the sex industry](#), sex tourism, and the marriage broker industry at a minimum. The existence of industries that revolve around the sale and purchase of human beings either for purposes of prostitution, pornography, stripping, and other forms of sexual exploitation assist sex traffickers in finding “markets” for the sale of women and girls they exploit. As such, laws and regulations related to these industries must be harmonized with sex trafficking laws. All forms of violence against women and girls, from domestic violence to forced marriage, may serve as “push” factors, which make them vulnerable to sexual exploitation and sex trafficking.
- The Center for Women and Public Policy published [Model Provisions for State Anti-Trafficking Laws](#), which contains proposed language for both sex tourism industry regulation and marriage broker industry regulation. (See: [Model Provisions for State Anti-Trafficking Laws](#), Center for Women Policy Studies, 13-17, 2005)

Promising Practices: Australia provides for strict penalties for those convicted of child sex tourism-related offences. A conviction for sexually exploiting children under 16 years old carries a 17 year prison sentence. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 68, 2009) Canadians who sexually exploit children abroad may be sentenced to up to 14 years in prison. The Canadian government published a brochure entitled “Bon Voyage, But...” to educate travelers about such penalties. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 100, 2009) Similarly, Spain warns travelers using the motto “There Are No Excuses” published in [Spanish](#) on a website. (See: [U.S. State Department 2009 Trafficking in Persons Report](#), 263, 2009)

Resources for developing legislation on sex trafficking of women and girls

- Ariadne Network and La Strada Moldova, *Trafficking in Human Beings in South-Eastern and Eastern Europe: Problems and Prospects*; available in [English](#).
- Caribbean Community Secretariat, *CARICOM Model Legislation on Domestic Violence*, 2006; available in [English](#).
- Carole Ageng'o, *Harmful Traditional Practices in Europe: Judicial Interventions*, 2009; available in [English](#).
- Center for Women Policy Studies, *Model Provisions for State Anti-Trafficking Laws*, 2005; available in [English](#).
- Coalition Against Trafficking in Women, *Good Practices: Targeting the Demand for Prostitution and Trafficking*, 2006; available in [English](#).
- Council of Europe Secretariats of the Directorate General of Legal Affairs and the Directorate General of Human Rights, *Criminal Law Reform on Trafficking in Human Beings in South-Eastern Europe: Pilot project in Romania and Moldova*, 2003; available in [English](#).
- Danish Red Cross, *Good Practices in Response to Trafficking in Human Beings: Cooperation Between Civil Society and Law Enforcement in Europe*, 2005; available in [English](#).
- Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 2007; available in [English](#).
- ECPAT International, *Combating the Trafficking in Children for Sexual Purposes: A Training Guide*, 2006; available in [English](#).
- ECPAT International, *Distilling Elements of Good Practice: The Action Programme against Trafficking in Minors for Sexual Purposes*, 2007; available in [English](#).
- ECPAT International, *Extraterritorial Laws: Why They Are Not Really Working And How They Can Be Strengthened*, 2008; available in English; available in [English](#).
- ECPAT International, *Monitoring State Progress to Protect Children & Young People from Trafficking for Sexual Purposes*, 2010; available in [English](#).
- ECPAT International, *Strengthening Laws Addressing Child Sexual Exploitation*, 2008; available in [English](#).

- European Conference on Preventing and Combating Trafficking in Human Beings, *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*, 2002; available in [English](#).
- European Council, *Council Framework Decision on Combating Trafficking in Human Beings*, 2002; available in [English](#).
- European Council, *Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings*, 2002; available in [English](#).
- Global Rights, *Combating Human Trafficking in the Americas: A Guide to International Advocacy*, 2007; available in [English](#).
- Global Rights, *Promoting Women's Human Rights: A Resource Guide for Litigating International Law in Domestic Courts*, 2006; available in [English](#).
- Global Rights, *State Model Law on Protection for Victims of Human Trafficking*, 2005; available in [English](#).
- Inter-Parliamentary Union and United Nations Office on Drugs and Crime, *Combating Trafficking In Persons: A Handbook for Parliamentarians*, 2009; available in [English](#).
- [International Centre for Migration Policy Development](#), *Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response*, 2006; available in [English](#).
- International Helsinki Federation for Human Rights, *A Form of Slavery: Trafficking in Women in OSCE Member States*, 2000; available in [English](#).
- International Human Rights Law Group, *Annotated Guide to the Complete UN Trafficking Protocol*, 2002; available in [English](#).
- IOM/US State Department, *Handbook on Performance Indicators for Counter-Trafficking Projects*, 2009; available in [English](#).
- Johns Hopkins University School of Advanced International Studies, *The Protection Project*, 1994; available in [English](#).
- *Moldova: Law on Preventing and Combating Violence in the Family*, 2007; available in [English](#).
- Monica O'Connor and Grainne Healy, *Links Between Prostitution and Sex Trafficking: A Briefing Handbook*, 2006; available in [English](#).

- Mohamed Mattar, *United Nations Expert Group Meeting on Good Practices in Legislation on Violence against Women, Legal Approaches to Trafficking as a Form of Violence against Women*, 2008; available in [English](#).
- Morissanda Kouyaté, *Harmful Traditional Practices Against Women And Legislation*, 2009; available in [English](#).
- National Advisory Council on Violence Against Women, *Toolkit To End Violence Against Women*, 2001; available in [English](#).
- Organization for Security and Cooperation in Europe, *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms*, 2008; available in [English](#).
- Organization for Security and Cooperation in Europe, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, 2004; available in [English](#).
- Polaris Project, *Model Comprehensive State Legislation to Combat Trafficking in Persons*, 2006; available in [English](#).
- Rowena V. Guanzon, *Laws on Violence Against Women in the Phillipines*, 2008; available in [English](#).
- Shelah S. Bloom, *Violence Against Women and Girls: A Compendium of Monitoring and Evaluation Indicators*, 2008; available in [English](#).
- UNICEF, *The Elimination of All Forms of Discrimination and Violence against the Girl Child: Situation Paper for the Pacific Islands Region*, 2006; available in [English](#).
- United Kingdom Home Office; Policing and Reducing Crime Unit, *Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in the UK*, 2000; available in [English](#).
- United Nations, *The UN Secretary-General's Database on Violence against Women*, 2009; available in [English](#).
- United Nations Division for the Advancement of Women, *Good Practices in Legislation on Violence Against Women*, 2008; available in [English](#).
- United Nations, [Expert Group Meeting on Trafficking in Women and Girls](#), 2002; available in English.
- United Nations Office of the High Commissioner on Human Rights, [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), 2002.

- United States Department of State, *Trafficking in Persons Report*, 2009; available in [English](#).
- UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, 2009; available in Arabic ([Introduction](#); [Module 1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [11](#), [12](#), [13](#), [14](#)); [English](#); Mandarin ([introduction](#); [module 1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [11](#), [12](#), [13](#), [14](#)) and Russian ([Introduction](#); [Module 1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [11](#), [12](#), [13](#), [14](#)).
- UNODC, *Compendium of Best Practices on Anti-Human Trafficking by Law Enforcement Agencies*, 2007; available in [English](#).
- UNODC, *Global Report on Trafficking in Persons*, 2009; available in [English](#).
- UNODC, *Model Law against Trafficking in Persons*, 2009; available in [English](#).
- UNODC, *Toolkit to Combat Trafficking in Persons*, 2008; available in [English](#).
- UNODC, *Trafficking in Persons: Global Patterns*, 2006; available in [English](#).
- UNODC Regional Office for South Asia, *Compendium of Best Practices on Anti-Human Trafficking by Non-Governmental Organizations*, 2008; available in [English](#).
- USAID, *A Call to Act: Engaging Religious Leaders and Communities in Addressing Gender-based Violence and HIV*, 2009; available in [English](#).
- USAID, *Toolkit: Responding to Gender-based Violence: A Focus on Policy Change*, 2006; available in [English](#).

Harmful Practices

Throughout this knowledge asset, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a good example or a promising practice.

Some of the laws cited herein may contain provisions which authorize the death penalty. In light of the United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

Overview

General principles for legislation on harmful practices

Elements to increase effectiveness of draft legislation on harmful practices

Considerations for drafting provisions criminalizing harmful practices

Other legal protections and considerations

Victim services

Public awareness and education

Drafting legislation on specific harmful practices

Resources for drafting legislation on harmful practices

Overview

- Discrimination and violence against women and girls has often been justified by invoking social or religious customs, values and practices. Such discriminatory social values often give rise to socially constructed forms of violence against women, known as “harmful practices,” that are accepted and justified as culture or tradition.

Harmful practices resulting in pain, suffering and humiliation for girls and young women originate from the deeply entrenched discriminatory views and beliefs about the role and position of females in many societies and communities. The differentiation in roles and expectations between boys and girls relegating girls to an inferior position starts from birth and continues throughout their whole life. Harmful traditional practices help replicate and perpetuate the subordinate position of women. The issue of harmful practices therefore cannot be addressed without tackling gender discrimination which is at the root of such practices.

(See: [No More Excuses! Ending all Harmful Traditional Practices against Girls and Young Women, 2007](#) (hereinafter “No More Excuses”))

- Harmful practices include a wide range of practices which vary from culture to culture and country to country and are constantly changing due to modernization, globalization and migration. For this reason, there is no complete list of harmful practices. Some, such as [female genital mutilation](#), [forced and child marriage](#), [maltreatment of widows](#), so-called [honour crimes](#) and [dowry-related violence](#) are discussed in separate sections in this Legislative Knowledge Module. Other forms of harmful practices include son preference resulting in female infanticide or pre-natal sex selection, breast ironing, witch hunts, acid attacks, inciting women to commit suicide, dedication of young girls to temples, restrictions on a second daughter’s right to marry, dietary restrictions for pregnant women, force feeding and nutritional taboos, and marriage to a deceased husband’s brother, among others. (See: United Nations, [Good Practices in Legislation on “Harmful Practices” Against Women, Report of Expert Group Meeting](#), 26-29 May 2009. (Hereinafter [Good Practices on Harmful Practices Expert Group Report](#)))
- Harmful practices are interconnected with one another and with other forms of violence and discrimination against women. Disconnecting the problem of harmful practices from gender inequality, simply shifts problems to other areas and fails to address the root cause of such practices. For example, female infanticide and sex-selective abortions result in a vast gender imbalance in a society which, in turn, can cause an increase in bride, kidnapping, forced marriage, rape and trafficking. Victims of forced marriage are often raped to keep them from being able to leave their kidnappers. In some countries, rape victims are accused of having engaged in pre-marital or extra-marital “sexual relations” and are further subjected to “honour crimes” and/or forced to marry the perpetrator of the rape in order to restore their family’s damaged “honour.” Maltreatment of widows and witch hunting are both related to discrimination

against women regarding property and inheritance rights. Female genital mutilation is often a requirement for marriage and sometimes seen as a way to control women's sexuality. Ironically, breast ironing is explained as an effort to preserve a girl's virginity and protect her from rape and sexual harassment by warding off signs of puberty. All of these harmful practices, along with others, are indicative of "discrimination against women and are symptomatic of the devalued status of women in society." ([Good Practices on Harmful Practices Expert Group Report](#), p.8)

"What we have learned is that violence against women is a universal problem and that one type of violence is intimately linked to another as the root causes are the same: they are all very much related to gender inequality." [Ertuk, Yakin, Human Rights Council Panel discussion on female foeticide and girl infanticide.](#)

- All Governments are obligated under international law to undertake action to end harmful practices. This includes enacting comprehensive legislation, collecting disaggregated data regarding the prevalence and forms of harmful practices practiced in their respective countries, undertaking awareness raising and capacity-building activities, including to ensure that lawyers, law enforcement officials, health professionals and other relevant service providers are sensitized to the causes and consequences of harmful practices and on how to identify and effectively respond to victims/survivors. Governments also have an obligation to tackle societal attitudes which perpetuate harmful practices, as well as to address their root causes, including through legislation which addresses gender discrimination in all its forms. Equality must take precedence over the interests of those wishing to maintain a status quo that discriminates against women.
- In order to eliminate harmful practices, government action and legislation must take multiple forms and engage various groups, including educational, legal, health services, cultural and religious leaders to effect true change and end harmful practices. In this asset, we will focus upon the valuable role that legal reform can play in working to end harmful practices.

While use of legal measures needs to be carefully considered and used in conjunction with other education efforts, laws can be a useful tool for change, giving NGOs and individuals greater leverage in persuading communities to abandon the practice. ([Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), p.13)

Sources of human rights law related to harmful practices

The following section provides an overview of the various international and regional human rights instrument and policy documents which address either directly or indirectly, the issue of harmful practices. The international legal and policy framework obliges all States to enact, implement and monitor legislation on all forms of violence against women and girls, including harmful practices. While some instruments explicitly reference one or more harmful practices, for the most part, the instruments discussed

below refer generally to harmful traditional or cultural practices. Relevant sections of this Knowledge Module may be referred to for sources of human rights law specific to [female genital mutilation](#), [forced and child marriage](#), [maltreatment of widows](#), [honour crimes](#) and [dowry-related violence](#).

International legal instruments

- The [Universal Declaration of Human Rights](#), 1948, provides a broad foundation for the protection of women against harmful practices. Article 1 provides that “[a]ll human beings are born free and equal in dignity and rights.” Article 3 states that “Everyone has the right to life, liberty and security of person.” Under Article 5, “No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. Article 7 states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 8 declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Article 12 protects an individual’s privacy while Article 16 provides for equality within and upon dissolution of marriage as well as for marriage to be entered into only upon consent of both parties. Article 25 addresses motherhood and childhood and more generally, Article 28 states: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”
- Similarly, the [International Covenant on Civil and Political Rights](#) (ICCPR) (1966) prohibits discrimination on the basis of sex, and mandates States Parties to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Article 2. In addition, the ICCPR protects individuals from “torture or cruel, inhuman or degrading treatment” and arbitrary or unlawful interference with their privacy. Articles 7 and 17. The ICCPR states that everyone has the “right to liberty and security of person” and that “[e]very child shall have...the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” Articles 9 and 24.
- The preamble to the [International Covenant on Economic, Social and Cultural Rights](#) (1976) acknowledges that human rights “derive from the inherent dignity of the human person.” Article 3 declares that the States Parties must “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” Article 12 protects the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” In its [General Comment No. 14](#), the Committee on Economic, Social, and Cultural Rights elaborates the obligation of States to “undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.”
- The [Convention of the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979 defines discrimination against women as:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. [Article 1](#).

- In General Recommendation No. 19, (11th Session, 1992), the Committee on the Elimination of Discrimination against Women affirms that violence against women is a form of discrimination against women as set forth in [Article 1](#) of the [Convention on the Elimination of All Forms of Discrimination Against Women](#).

- In addition, the [Recommendation](#) acknowledges the following:

Paragraph 11: Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.

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

- The Committee recommends that:

(e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures;

(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);

- States Parties to CEDAW must eliminate harmful practices by undertaking various measures, including:
 - (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated*

therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women. [Article 2](#) (emphasis added).

- In addition, States Parties to CEDAW are required to “*modify the social and cultural patterns of conduct ... with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*” [Article 5](#).
- Finally, [Article 16](#) provides for the elimination of “discrimination against women in all matters relating to marriage and family relations,” and specifically states:
The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. [Article 16\(2\)](#)
- The [Convention on the Rights of the Child](#) (CRC), 1989, places on the government the ultimate responsibility for ensuring that the fundamental rights of children are recognized and protected. The CRC establishes standard whereby “the best interests of the child” is to be the guiding principle for all actions concerning children. Article 3.
 - With regard to harmful practices, States Parties to the Convention are required to “*take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence ...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*” Article 19(1).

- The Convention also requires States Parties to create “*social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*” Article 19(2).
- Article 24 requires states to “*take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of the children.*” (Article 24(3))

(6) In addition, Article 37 mandates that States Parties ensure the protection of children from “torture or other cruel, inhuman or degrading treatment or punishment.”

- Each of the following General Comments by the [Committee on the Rights of the Child](#) specifically identify harmful practices as violations of the [Convention on the Rights of the Child](#):
 - [General Comment No. 3 \(2003\): HIV/AIDS and the Rights of the Child](#)
 - [General Comment No. 4 \(2003\): Adolescent health and development in the context of the Convention on the Rights of the Child](#)
 - [General Comment No. 7 \(2005\): Implementing child rights in early childhood](#)

International policy instruments

Several international policy documents have also called upon States to eliminate harmful practices, including through the enactment of appropriate legislation.

- Article 2 of the General Assembly’s landmark [Declaration on the Elimination of Violence Against Women](#), 1993, defines violence against women, in part, as:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; . . .

Article 4 of the Declaration provides that States should:

. . . [C]ondemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.

- In the same year, the United Nations Sub-Commission on the Promotion and Protection of Minorities adopted a [Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children](#), which recognizes that:

(43) Violence against women and girl children is a global phenomenon which cuts across geographical, cultural and political boundaries and varies only in its manifestations and severity. Gender violence has existed from time immemorial and continues up to the present day. It takes covert and overt forms including physical and mental abuse. Violence against women, including female genital

... mutilation, wife-burning, dowry-related violence, rape, incest, wife battering, female foeticide and female infanticide, trafficking and prostitution, is a human rights violation and not only a moral issue. It has serious negative implications on the economic and social development of women and society, and is an expression of the societal gender subordination of women.

- The [Plan of Action](#) calls on governments to:
 - ... openly condemn all forms of violence against women and children, in particular girls, and commit themselves to confronting and eliminating such violence.*
- The [Plan of Action](#) sets forth specific elements of a National Action Plan to eliminate harmful traditional practices affecting the health of women and children.
- At an international level, the [Plan of Action](#) calls on the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to keep the issue of harmful practices “under constant review.” Para. 64. The [Plan of Action](#) also calls on the Commission on the Status of Women and other international organizations to do the following:
 - (65) The Commission should give more attention to the question of harmful traditional practices.*
 - (66) All the organs of the United Nations working for the protection and the promotion of human rights, and in particular the mechanisms established by the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Covenants on Human Rights and the Convention against Torture, should include in their agenda the question of all harmful traditional practices which jeopardize the health of women and girls and discriminate against them.*
 - (67) Intergovernmental organizations and specialized agencies and bodies of the United Nations system, such as the United Nations Children's Fund, the United Nations Development Programme, the United Nations Population Fund, the United Nations Development Fund for Women, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, should integrate in their activities the issue of confronting harmful traditional practices and elaborate programmes to cope with this problem.*
- The [Plan of Action](#) also provides action recommendations for specific types of harmful practices including son preference, early marriage, child delivery practices, and violence against women and girl children. These recommendations are included throughout this asset under relevant sections.

- The [Vienna Declaration and Programme of Action of the World Conference on Human Rights](#) (1993) calls for the “eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.” Section II(B)(3)(Para 38). In addition, the [Vienna Declaration and Programme of Action of the World Conference on Human Rights](#) “urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.” (Para. 49)
- The Programme of Action of the International Conference on Population and Development speaks out against son preferences, female genital mutilation, infanticide, prenatal sex selection and trafficking, among other harmful practices:

The objectives are to eliminate all forms of discrimination against the girl child, to eliminate the root causes of son preference, to increase public awareness of the value of the girl child and to strengthen her self-esteem. To these ends, leaders at all levels of society should speak out and act forcefully against gender discrimination within the family based on preference for sons. There should be special education and public information efforts to promote equal treatment of girls and boys with respect to nutrition, health care, education and social, economic and political activity, as well as equitable inheritance. Governments should develop an integrated approach to the special health, education and social needs of girls and young women, and should strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses. Governments are urged to prohibit female genital mutilation and to prevent infanticide, prenatal sex selection, trafficking of girl children and use of girls in prostitution and pornography. Chapter IV, B.
- The [Beijing Declaration and the Platform for Action: Fourth World Conference on Women](#), 1995, recognized that girls are:

[o]ften subjected to various forms of ... violence and harmful practices such as female infanticide and prenatal sex selection, incest, female genital mutilation and early marriage, including child marriage. Para. 39.

The Platform required that: “Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated.” Para. 224.
- Subsequently, the [United Nations General Assembly](#) has continued to call for more attention to harmful practices and more efforts by States for the protection of women and girls from harmful practices. (See: United Nations, [Resolution Adopted by General Assembly on Traditional or Customary Practices Affecting the Health of Women and Girls \(1 February 1999\) A/Res/53/117](#); United Nations, [General Assembly Resolution on Traditional or Customary Practices Affecting the Health of Women and Girls \(7 February 2000\) A/Res/54/133](#); and United Nations, [General Assembly Resolution Traditional or Customary Practices Affecting the Health of Women and Girls \(30 January 2002\) A/Res/56/128](#))

- The three most recent General Assembly Resolutions on Intensification of Efforts to Eliminate All Forms of Violence Against Women call on Member States to “review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles.” (See: General Assembly Resolutions ([30 January 2007](#)) A/RES/61/143, ([30 January 2009](#)) A/RES/63/155, and ([11 February 2010](#)) A/RES/64/137)
- The [United Nations Commission on the Status of Women](#) has continued to address harmful practices. For example, at its [42nd session](#), the Commission reviewed the implementation of several critical areas of concern of the [Beijing Declaration and Platform for Action](#) and expressed concern regarding the persistence of harmful practices, calling on governments to:

Develop and implement national legislation and policies prohibiting harmful customary or traditional practices that are violations of women’s and girls’ human rights and obstacles to the full enjoyment by women and girls of their human rights and fundamental freedoms; . . . [p]rosecute the perpetrators of practices that are harmful to the health of women and girls; [and] [e]radicate customary or traditional practices, particularly female genital mutilation, that are harmful to, or discriminatory against, women and that are violations of women’s human rights and fundamental freedoms, through the design and implementation of awareness-raising programmes, education and training; ...

- At its [51st session](#) of the Commission on the Status of Women also focused on the elimination of all forms of discrimination and violence against girls. The [Commission’s report on that session](#) reaffirms the responsibility of States to:

Develop and implement national legislation and policies prohibiting harmful customary or traditional practices, particularly female genital mutilation, that are violations of and obstacles to the full enjoyment by women of their human rights and fundamental freedoms, and prosecute the perpetrators of such practices that are harmful to the health of women and girls . . .

- The Commission has also adopted resolutions calling on States to take action to end specific harmful practices, including female genital mutilation ([Resolutions 51/2 and 52/2](#)) and forced marriage ([Resolution 51/3](#)).

Regional instruments

Regional legal and policy frameworks also mandate legislative action to address harmful practices.

Africa

- [Article 18\(3\)](#) of the [African Charter on Human and Peoples' Rights](#) stipulates that *“the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”*
- The [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (2003) ([The Maputo Protocol](#)) provides much more detailed guidance to States on their obligations in this regard, mandating States Parties to *“...adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.”* Article 4. This Protocol also specifically directs States Parties to prohibit and eliminate harmful practices, explicitly including the practice of FGM:

Article 5 - Elimination of Harmful Practices

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- *creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;*
 - *prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;*
 - *provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting;*
 - *protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.”* Article 5.
- In addition, the Protocol requires States Parties to enact legislation to guarantee free and full consent to marriage and to establish 18 years as the minimum age of marriage for women. (Article 6) Articles 20 and 21 address the rights of widows, stating:

Article 20 – Widows' Rights

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) *that widows are not subjected to inhuman, humiliating or degrading treatment;*

- b) *a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;*
- c) *a widow shall have the right to remarry, and in that event, to marry the person of her choice.*

Article 21 - Right to Inheritance

1. *A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.*
2. *Women and men shall have the right to inherit, in equitable shares, their parents' properties.*

- The [African Charter on the Rights and Welfare of the Child](#) (1990) prohibits discrimination and protects children's rights to survival, protection, privacy, and physical, mental, and spiritual health. Articles 3, 5(2), 10, 14(1). Article 16 prohibits all forms of torture, inhuman or degrading treatment, including physical, sexual or mental abuse from neglect or maltreatment. Article 21 requires Member States of the Organization of African Unity to:

[T]ake all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

*those customs prejudicial to the health or life of the child; and
those customs and practices discriminatory to the child on the grounds of sex or other status. Article 21(1).*

Europe

In recent years, the European regional system of human rights protection has paid increasing attention to state obligations to end harmful practices.

- Both the [European Parliament Resolution on Female Genital Mutilation \(2001/2035\(INI\)\)](#), and the [European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\)](#) specifically condemn the practice of FGM and call for action by members to prohibit that harmful practice. In addition, the more recent resolution states that “such violations can under no circumstances be justified by respect for cultural traditions of various kinds or initiation ceremonies.”
- The [European Parliament Resolution of 16 January 2008: Towards an EU strategy on the rights of the child \(2007/2093\(INI\)\)](#) addresses harmful practices against children generally. The Parliament:
 42. *Affirms that no forms of violence against children in any setting, including the home, can be justified and that all violence must be condemned; therefore calls for Community legislation that prohibits all forms of violence, sexual abuse, degrading punishment and harmful traditional practices; condemns all forms of*

violence against children including physical, psychological and sexual violence, such as torture, child abuse and exploitation, child abduction, trafficking in or sale of children and their organs, domestic violence, child pornography, child prostitution, pedophilia, and harmful traditional practices such as female genital mutilation, forced marriages and honour crimes; [and]

46. Urges the Member States to raise medical practitioners' awareness of harmful traditional practices and to ensure that crimes are punished consistently under the legislation in force, with particular attention being paid to vulnerable groups including immigrant girls and women, those from ethnic minorities and disabled girls;. . .

- In 2002, the [Committee of Ministers to Member States of the Council of Europe](#) adopted [Recommendation Rec\(2002\)5 on the protection of women against violence](#). The ground-breaking document defined “violence against women” broadly and set forth general measures for Member States to take to protect women against violence.

For the purposes of this recommendation, the term “violence against women” is to be understood as any act of gender-based violence, which 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. This includes, but is not limited to, the following:

a. violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;

b. violence occurring within the general community, including, inter alia, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;

c. violence perpetrated or condoned by the state or its officials;

d. violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.

[\(Appendix to Recommendation Rec \(2002\)5](#) (emphasis added))

- In April 2009, the [Parliamentary Assembly Council of Europe](#) adopted a resolution that called on Member States to adapt their national legislation in order to prohibit and penalize forced marriages, female genital mutilation and any other gender-based violations of human rights. (See: [Council of Europe Press Release \(2009\)](#)) Previously, the [Parliamentary Assembly Council of Europe](#) had adopted [Resolution 1327 \(2003\)](#) on So-called “honour crimes” expressing its concern with

“the increase in so-called “honour crimes”, committed against women in the name of honour, which constitute a flagrant violation of human rights based on archaic, unjust cultures and traditions.”

Asia

The [Declaration on the Elimination of Violence Against Women in the ASEAN Region](#), (2004), sets forth eight measures to enhance regional collaboration to eliminate violence against women. Although the Declaration does not specifically address harmful practices as a form of violence against women or result of discrimination, it does call on the parties to agree to the following measure:

“To enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimisation of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody...” Section 4.

Americas

The [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#) (Belem do Para) (1994) affirms the right of women to be free from violence and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence. Article 6(b) affirms that a woman’s right to be free from violence includes her right “to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.” In addition, the Convention places a broad scope of duties on States Parties, including, among others, the following items:

Article 7

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

- a. *refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;*

- b. apply due diligence to prevent, investigate and impose penalties for violence against women;*
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;*
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;*
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;*
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;*
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and*
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention. (Emphasis Added).*

General principles for legislation on harmful practices

- Harmful practices are entrenched in issues of gender roles, women's status and women's own self-identity. While laws are a critical means to eliminating harmful practices, stopping harmful practices involves deeper changes to societal norms, individual beliefs, and deeply rooted issues of gender inequality. Legislation should "acknowledge[s] that all forms of violence against women, *including all harmful practices*, are a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women's human rights. [Good Practices on Harmful Practices Expert Group Report](#), p. 11) (emphasis added).
- As such, Government action and legislation must take multiple forms and engage various groups, including educational, legal, health services, cultural and religious leaders to effect true change and end harmful practices. "While use of legal measures needs to be carefully considered and used in conjunction with other education efforts, laws can be a useful tool for change, giving NGOs and individuals greater leverage in persuading communities to abandon the practice." ([Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), p. 13)

States should act immediately to fulfill their obligation to protect girls and young women from violence in general and harmful traditional practices in particular, committed by state agents and private entities or persons, through the adoption of laws and policies. It has to put in place institutions and agencies which are competent and have the capacity to respond to the needs of children who are suffering from the effects of harmful practices as well as to prevent the further occurrence of harmful traditional practices. (See: [No More Excuses](#), p. 28)

Core elements of legislation on harmful practices

The following foundations should be incorporated when drafting any law on harmful practices:

- Legislation should clearly prohibit discrimination and violence against women and protect women and girls from discrimination and violence;
- Legislation should be comprehensive and criminalize all forms of violence against women, (See: [UN Handbook](#), 3.1.2)
- Drafters should recognize harmful practices as a form of discrimination and violence against women;
- Drafters should assess the form and extent of harmful practices in an area and draft legislation that prohibits customs, practices and social and cultural patterns that discriminate against women and girls and perpetuate harmful practices;
- Legislation should require governments to collect data on the prevalence and types of harmful practices in their respective countries and ensure that prosecutors, service providers and medical personnel are aware of the various potential harmful practices and trained to identify and effectively respond to victims;

- Legislation should clearly condemn, prohibit, and penalize harmful practices including, among others, female genital mutilation, forced and child marriage, maltreatment of widows, honor crimes and dowry-related violence, female infanticide and female feticide;
- Legislation should specifically define, prosecute and punish harmful practices. Although harmful practices may be prosecuted under general criminal legislation such as provisions on assault, or constitutional measures such as equality and protection from violence, for the most effective implementation, drafters should create legislation specific to the various harmful practices.
- Legislation should ensure that harmful practices are addressed in “stand-alone” laws on one type of harmful practice, or included in a “comprehensive law” that addresses multiple forms of violence against women;
- Legislation should integrate protections against harmful practices into a domestic violence and child protection framework;
- Legislation should require the exercise of due diligence in preventing, investigating and punishing all matters of violence against women and girls, including those traditionally considered to be within the purview of the family or culture;
- Legislation should be comprehensive in that it not only criminalizes harmful practices but also mandates action to prevent such practices, as well as allocates funding and training to ensure that legislation is implemented;
- Legislation should ensure accountability for perpetrators of harmful practices and require that the penalty reflect the severity of the harmful practice committed;
- Legislation should eliminate mitigation in sentencing perpetrators of harmful practices;
- Legislation should provide legal, medical, educational, economic and social support to victims;
- Legislation should provide for a civil order for protection remedy for victims of harmful practices;
- Legislation should require data collection and monitoring of the prevalence of, consequences of, and responses to harmful practices specific to the area covered by the legislation;
- Legislation should establish and mandate funding for public awareness measures aimed at all sectors and trainings for government officials, legal professionals and service providers on harmful practices and women’s human rights; and
- Legislation should provide for collaboration with civil society and traditional and religious leaders.

(See: [Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa](#), Art. 5; [UN Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children](#); [CEDAW General Rec. No. 19](#); and [UN Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children](#))

- As an example, the United Nations Sub-Commission on the Promotion and Protection of Minorities adopted a [Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children](#) with recommendations for specific types of harmful practices including son preference, early marriage, child delivery practices, and violence against women and girl children. The Plan sets forth the following action elements related to violence against women and girl children:

Violence against women and girl children

(43) Violence against women and girl children is a global phenomenon which cuts across geographical, cultural and political boundaries and varies only in its manifestations and severity. Gender violence has existed from time immemorial and continues up to the present day. It takes covert and overt forms including physical and mental abuse. Violence against women, including female genital mutilation, wife-burning, dowry-related violence, rape, incest, wife battering, female foeticide and female infanticide, trafficking and prostitution, is a human rights violation and not only a moral issue. It has serious negative implications on the economic and social development of women and society, and is an expression of the societal gender subordination of women.

(44) Governments should openly condemn all forms of violence against women and children, in particular girls, and commit themselves to confronting and eliminating such violence.

(45) To stop all forms of violence against women, all available media should be mobilized to cultivate a social attitude and climate against such totally unacceptable human behavior.

(46) Governments should set up monitoring mechanisms to control depiction of any form of violence against women in the media.

(47) Violence being a form of social aberration, Governments should advocate the cultivation of a social attitude so that victims of violence do not suffer any continuing disability, feelings of guilt, or low self-esteem.

(48) Governments should enact and regularly review legislation for effectively combating all forms of violence, including rape, against women and children. In this connection, more severe penalties for acts of rape and trafficking should be introduced and specialized courts should be established to process such cases speedily and to create a climate of deterrence.

(49) Female infanticide and female foeticide should be openly condemned by all Governments as a flagrant violation of the basic right to life of the girl-child.

(50) The hearing of cases of rape should be in camera and the details not publicized, and legal assistance should be provided to the victims.

(51) Traditional practices of dowry and bride price should be condemned by Governments and made illegal. Acts of bride-burning should likewise be condemned and a heavy penalty inflicted on the guilty.

(52) Families, medical personnel and the public should be encouraged to report and have registered all forms of violence.

(53) More and more women should be inducted in law enforcement machinery as police officers, judiciary, medical personnel and counsellors.

(54) Gender sensitization training should be organized for all law enforcement personnel and such training should be incorporated in all induction and refresher courses in police training institutions.

(55) Mechanisms for networking and exchanges of information on violence should be established and strengthened.

(56) Governments should provide shelters, counselling and rehabilitation centres for victims of all forms of violence. They should also provide free legal assistance to victims.

(57) Governments must develop and implement a legal literacy campaign to improve the legal awareness of women, including dissemination of information through all available means, particularly NGO programmes, adult literacy courses and school curricula.

(58) Governments must promote research on violence against women and create and update databases on this subject.

(59) Community-based vigilance should be promoted regarding gender violence, including domestic violence.

(60) At the national level, Governments should promote and set up independent, autonomous and vigilant institutions to monitor and inquire into violations of women's rights, such as national commissions for women consisting of individuals and experts from outside the Governments.

(61) Governments which have not done so are urged to ratify the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, to ensure full gender equality in all spheres of life. The States Parties to these Conventions must comply with their provisions in order to achieve their ultimate objectives, including the eradication of all harmful traditional practices.

(62) NGOs should be active in bringing all available information on systematic and massive violence against women and children, in particular girls, to the attention of all relevant bodies of the United Nations, such as the Centre for Human Rights, the Commission on the Status of Women, and specialized agencies for the necessary intervention. Such information should also be shared with the Governments concerned, womens' commissions and human rights organizations.

(63) Women's organizations should mobilize all efforts, including action research, to eradicate prejudicial and internalized values which project a diminished image of women. They should take action towards raising awareness among women about their potential and self-esteem, the lack of which is one of the factors for perpetuating discrimination.

Drafting the legislative preamble to laws addressing harmful practices

The legislative preamble sets the stage for the entire piece of legislation. The following elements are important to a strong and inclusive legislative preamble:

- A definition of discrimination against women and girls as a restriction based upon sex which impairs the rights of women and girls. (See: [United Nations Handbook for legislation on violence against women](#), 3.1.1 (hereinafter UN Handbook))
- A statement that acknowledges that the root cause of violence against women is the subordinate status of women in society. (See: [General Recommendation 19](#), Article 11; [UN Secretary-General's In-depth study on violence against women](#), para. 30; [Other Causes and Complicating Factors](#), StopVAW, The Advocates for Human Rights; and [The International Legal Framework](#), StopVAW, The Advocates for Human Rights)
- Legislation should “acknowledge[s] that all forms of violence against women, *including all harmful practices*, are a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women’s human rights.” (See: [Good Practices on Harmful Practices Expert Group Report](#), p. 11) (emphasis added))
- A statement that harmful practices against girl children are forms of child abuse;
- A statement that the law will protect all women and girls. (See: [UN Handbook 3.1.3](#)) For example, one of the first articles of the [Maria da Penha Law \(2006\) of Brazil](#) (hereinafter law of Brazil) states that:
“ All women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement.” Article 2;
- Legislation should be directed towards preventing harmful practices in all forms and protecting women and girls from harmful practices committed by *all perpetrators*, including state agents and public agencies, as well as private entities, including family members and groups of people;
- Legislation should explicitly state that harmful practices may not be justified by reference to any custom, tradition or religious consideration, and prohibit customs, practices and social and cultural patterns that discriminate against women and girls and perpetuate harmful practices. (See: [UN Handbook 3.1.5](#))
- A statement that the state has the duty to prevent harmful practices, to investigate and prosecute cases of harmful practices, to investigate cases of imminent harmful practices, to protect potential victims, to punish perpetrators of harmful practices, and to give support to survivors of harmful practices; and
- Legislation should refer to international and regional human rights conventions for a human rights framework to addressing harmful practices.

Elements to increase effectiveness of draft legislation on harmful practices

Legislation to end harmful practices will be more effective if the following elements are included in the drafting of new laws:

- Legislation should mandate adoption of a national plan and strategy to eliminate harmful practices.
- Legislation should ratify international and regional human rights instruments.
- Legislation should review and ensure constitutional protection provisions.
- Legislation should include provisions that call for the harmonization of all existing laws, including customary and religious laws, policies and legislation to accord with the new legislation on harmful practices.

Legislation to mandate adoption of national plan and strategy to eliminate harmful practices

- Legislation to eliminate violence against women, including harmful practices, “is most likely to be implemented effectively when accompanied by a comprehensive policy framework which includes a national action plan or strategy.” ([UN Handbook](#) 3.2.1)
 - Where a current national action plan or strategy on harmful practices does not exist, legislation on harmful practices should require that the state draft, adopt and implement a national plan and strategy to eliminate harmful practices.
 - The national plan and strategy should:
 - contain measurable benchmarks and indicators of progress made towards eliminating harmful practices; and
 - create a framework for a comprehensive and coordinated approach to the implementation of the legislation.
 - Where a national action plan addressing harmful practices already exists, legislation should reference the national action plan as providing the framework for the comprehensive and coordinated implementation of the legislation.
 - A national plan should include the ratification of international and regional human rights instruments.
 - Legislation should establish the supremacy of the constitution and national law over customary or religious law.
 - A national plan or strategy should emphasize accurate information that will be presented in all applicable local languages and will also be presented to the non-literate.
 - A national plan should highlight the importance of a coordinated community response to the elimination of harmful practices with communication and collaboration between agencies to set and meet concrete goals.
 - Legislation should require that child protection services are incorporated into the national plan and strategy.
 - Legislation should require adequate funding to implement the national plan and strategy.

- As an example, the United Nations Sub-Commission on the Promotion and Protection of Minorities adopted a [Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children](#). The Plan sets forth the following elements of national action in their plan to eliminate harmful traditional practices affecting the health of women and children:

National Action:

(1) A clear expression of political will and an undertaking to put an end to traditional practices affecting the health of women and girl children, particularly female genital mutilation, are required on the part of the Governments of countries concerned.

(2) International instruments, including those relating to the protection of women and children, should be ratified and effectively implemented.

(3) Legislation prohibiting practices harmful to the health of women and children, particularly female genital mutilation, should be drafted.

(4) Governmental bodies should be created to implement the official policy adopted.

(5) Governmental agencies established to ensure the implementation of the Forward-looking Strategies for the Advancement of Women adopted at Nairobi in 1985 by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace should be involved in activities undertaken to combat harmful traditional practices affecting the health of women and children.

(6) National committees should be established to combat traditional practices affecting the health of young girls and women, particularly female genital mutilation, and governmental financial assistance provided to those committees.

(7) A survey and review of school curricula and textbooks should be undertaken with a view to eliminating prejudices against women.

(8) Courses on the ill effects of female genital mutilation and other traditional practices should be included in training programmes for medical and paramedical personnel.

(9) Instruction on the harmful effects of such practices should be included in health and sex education programmes.

(10) Topics relating to traditional practices affecting the health of women and children should be introduced into functional literacy campaigns.

(11) Audiovisual programmes (sketches, plays, etc.) should be prepared and articles published in the press on traditional practices adversely affecting the health of young girls and children, particularly female genital mutilation.

(12) Cooperation with religious institutions and their leaders and with traditional authorities is required in order to eliminate traditional practices such as female genital mutilation which are harmful to the health of women and children.

(13) All persons able to contribute directly or indirectly to the elimination of such practices should be mobilized.

Other examples:

- **Uruguay** - The *Uruguayan Law for the Prevention, Early Detection, Attention to, and Eradication of Domestic Violence* (2002) mandates the design of a national plan against domestic violence. (See: [UN Handbook](#) 3.2.1.)
- **Kenya** - Article 46 of the [Kenyan Sexual Offences Act \(2006\)](#) requires that the relevant Minister prepare a national policy framework to guide the implementation and administration of the Act, and review the policy framework at least once every five years.

46. The Minister shall -

(a) prepare a national policy framework to guide the implementation, and administration of this Act in order to secure acceptable and uniform treatment of all sexual related offences including treatment and care of victims of sexual offences;

(b) review the policy framework at least once every five years; and

(c) when required, amend the policy framework.

- **Mexico** – The [Mexican Law on Access of Women to a Life Free of Violence \(2007\)](#) prioritizes the inclusion of measures and policies to address violence against women in the National Development Plan and obliges the Government to formulate and implement a national policy to prevent, address, sanction and eradicate violence against women.
- **India** – [National Plan of Action for Children 2005](#)

Section 6 of India's [National Plan of Action for Children 2005](#) addresses the Rights of the Girl Child. It specifically identifies as goals the end of sex selection, female feticide and infanticide, as well as child marriages. Its objectives include addressing the root causes of harmful practices such as son preference and the elimination of harmful practices that result from son preference such as pre-natal sex selection, female feticide and infanticide. Strategies to reach these goals include advocacy through community and religious leaders as well as government officials, and enforcement of laws that protect the equal rights of the girl child.

6 - Rights of the Girl Child

6.1 Goals

6.1.1 Assurance of equality of status for girl child as an individual and a citizen in her own right through promotion of special opportunities for her growth and development.

6.1.2 To ensure survival, development and protection of the girl child and to create an environment wherein she lives a life of dignity with full opportunity for choice and development.

6.1.3 To stop sex selection, female foeticide and infanticide.

6.1.4 *To eliminate child marriages.*

6.1.5 *To ensure the girl child's security and protect her from abuse, exploitation, victimization and all other forms of violence.*

6.1.6 *To protect the girl child from deprivation and neglect and to ensure the girl child equal share of care and resources in the home and the community and equal access to services.*

6.1.7 *To take measures to protect girl children from any treatment which undermines their self esteem and causes their exclusion from social mainstream and also to break down persistent gender stereotype.*

6.1.8 *To eliminate all obstacles that prevent girls from full enjoyment of human rights and fundamental freedom including equal rights in succession and inheritance.*

6.1.9 *To ensure equal opportunity for free and compulsory elementary education to all girls.*

6.2 Objectives

6.2.1 *To remove all social and familial biases and discrimination against the girl child throughout her lifecycle.*

6.2.2 *To ensure protection and promotion of rights of the girl child with specific attention to age specific needs.*

6.2.3 *To ensure that the girl child receives equal access to learning opportunities at all ages enabling her to develop a positive self-image as a full participant in society.*

6.2.4 *To take measures to enable girls to develop their full potential through equal access to education and training, nutrition, physical and mental health care and social opportunities.*

6.2.5 *To address the root causes of son preference and resultant discrimination against the girl child.*

6.2.6 *To eliminate all forms of discrimination against the girl child which result in harmful and unethical practices, like pre-natal sex selection, female foeticide and infanticide, gender stereotypes, discrimination in care and food allocation, socialization, etc.*

6.2.7 *To take steps through law, policy and programmes to eliminate all forms of violence against the girl child; and also to provide legal, medical, social and psychological support services and programmes to assist girls who have been subjected to violence.*

6.2.8 *To take measures to ensure that girls with disabilities have full and equal access to all services, including support to meet their special needs.*

6.2.9 *To create and sustain a gender sensitive education system to ensure equal education and learning opportunities to girls with the objective of ensuring gender parity at all stages of education.*

6.3. Strategies

The above objectives will be achieved by the following strategies: -

6.3.1 Advocacy through social, political and religious leaders and through all government programmes to change attitudes and practices discriminatory towards girls.

6.3.2 Enforce laws that protect the equal rights of the girl child, like Child Marriage Restraint Act, PNDT Act, ITPA, Juvenile Justice (Care and Protection of Child) Act, Child Labour (Prohibition and Regulation) Act etc. by generating social support and through other necessary action.

6.3.3 Encourage and support non-government organizations and community based organizations to promote positive attitudes and practices towards the girl child.

6.3.4 Take steps to ensure all girls are enrolled in schools and create an environment for their retention and learning achievement.

6.3.5 Take affirmative action for removal of gender discrimination against the girl child and inform and sensitize society about the traditional and customary practices which are harmful to the girl child.

6.3.6. Monitor all clinics and other health centers to prevent sex selection and female foeticide; further, register and monitor all pregnancies to prevent selective abortion.

6.3.7. Promote gender sensitization among all those in authority, including the judiciary, police and local authorities and members of the general public.

6.3.8. Develop and promote day care services in order to relieve the girl child from sibling care responsibilities. This will enable her to access opportunities for her own development.

6.3.9. Take measures to ensure that all girl children receive holistic health care and protection including preventive and curative services covering their health at all ages, including reproductive health information and services.

6.3.10. Address nutrition discrimination against the girl child through sensitization, awareness and outreach programmes to ensure that she has equal access to food allocation within the home.

6.3.11. Take preventive, protective and rehabilitative measures to address the greater vulnerability of the girl child to economic and sexual exploitation.

- **Ethiopia – [Ethiopia's National Action Plan](#) - [National Policy on Women](#)**

- According to the introduction of the [Ethiopian National Policy on Women](#):
The Federal Democratic Government of Ethiopia has declared its unequivocal commitment to the development of women with the announcement of the National Policy on Women in 1993 (referred to as the Women's Policy), and the promulgation of the new Constitution in 1994.
- The Policy recognizes harmful practices as a factor in the continued oppression of women and girls:
One of the contributing factors for the subordinate position of Ethiopian women is the existence of harmful traditional practices that puts women in subordinate position and militates against their equal growth and development. Thus more awareness and sensitization programs in different issues on gender should be addressed and advocacy at different level both at the policy and grass roots is so important and for this reason using different media and strategy through formal and informal methodology is of paramount importance. Unified effort of concerned groups is believed to make an impact and bring the desired attitudinal change. Already advocacy strategy has been designed to be implemented by both government, NGO's and women groups on issues such as FGM and other HTP's and on violence against women including domestic violence.
- In addition to advocacy, the Policy addresses the need for capacity building, organization, and participation of various governmental and non-governmental sectors to change attitudes, knowledge and practices. The Policy also focuses on specific policy and legislative changes that impact the elimination of harmful practices:

The national constitution has been developed to protect the fundamental rights of women and their interest of access and control over resource, about equality among women and men in marriage. It recognizes the history of inequality and discrimination suffered by women in Ethiopia. Ethiopian women are entitled to remedial and affirmative measures to enable them to compete and participate on the basis of equality with men in political, economic and social life. Women have the right to protection by the state from harmful customs and practices that press them or cause bodily or mental harm. They have equal right to employment, promotion, affirmative action is undertaken to improve the employment status of women through the revision of the civil service codes and existing labour laws. (Emphasis Added).

Women's access to and control over productive resources including access to farm land, water and forest resources, new policies and program have been formulated and adopted with increased gender consideration and equity.

Thus as regard to property and land rights the constitution states that women shall acquire, administer control, use and transfer of property. With

respect to use, transfer, administration and control of land women have as equal access as men to benefit this. Employment, promotion and transfer of pension are explicitly put in the constitution.

Access to family planning education information and capacity building activities are provided in order to prevent harm during pregnancy and child birth and safe guard the mother health.

Concerning maternity leave the constitution also affirms that maternity leave will be provided with full pay and the duration is determined taking into account the nature of the work, the health of the mother and the well being of the child and family.

Ratify international and regional human rights instruments

- Part of the national plan and strategy to eliminate harmful practices should be a government plan to ratify international and regional human rights treaties that are relevant to harmful practices and call for an end to such customs.
- Ratification of such treaties should be done with limited reservations. Reservations undermine the signing state's obligation to promote women's rights or eliminate harmful practices. For example, reservations to the Women's Convention or the Convention on the Rights of the Child which state that customary law or principles of Islam have precedence over treaty articles that prohibit discrimination against women or other conflicting directives of the Convention, undermine the very intent of the treaty itself.
- Clear government commitment to human rights, as evidenced by ratification without reservations of human rights treaties, provides impetus for social movements necessary for social change.
- After ratification, existing and future legislation must be amended or written to be consistent with the ratified human rights instruments. Ratification of such treaties will require the drafting, implementation, and monitoring of new laws and policies to protect women and girls from harmful practices.

States Parties to international human rights treaties and regional agreements should be pressured to adopt laws and policies prohibiting harmful traditional practices in particular and violence against children in general as well as promoting gender equality.

(See: [No More Excuses](#), p. 31)

Ensure constitutional protection provisions

- The national strategy should also ensure that the national constitution upholds the rights of women and girls to be free from harmful practices. In most States around the world, the national constitution provides the primary source of rights for the population. As likely the highest legal authority for a country, legislation and government action generally must conform to the norms and standards set forth in it. As such, a constitution should be drafted to:
 - Ensure the equality of women and girls;
 - Protect the rights of children explicitly;
 - Establish supremacy of constitutional protections and other statutory law over customary or religious laws;
 - Explicitly prohibit harmful practices, whether specifically named or implicitly understood to be harmful practices within the human rights framework; and
 - Provide legal remedies for women and girls who have been subjected to harmful practices.
- Constitutions that do not include these provisions should be amended.

“Constitutions should be unambiguous in securing the equality of women and men under the law in all matters, protecting the rights of children and guaranteeing women and children protection against harmful customs.” Female Genital Mutilation: A Guide to Laws and Policies Worldwide, Anika Rahman and Nahid Toubia, p. 60.

Examples:

- **Ethiopia – [Constitution of Ethiopia](#)**
While the [Ethiopian Constitution](#) does not explicitly refer to FGM, it establishes the supremacy of constitutional provisions and protects women and girls from “harmful customs”, including, by interpretation, FGM.

Article 9 Supremacy of the Constitution

(1) The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.

(2) All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.

(3) It is prohibited to assume state power in any manner other than that provided under the Constitution.

(4) All international agreements ratified by Ethiopia are an integral part of the law of the land. (Emphasis added).

Article 35 Rights of Women

1) Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.

(2) Women have equal rights with men in marriage as prescribed by this Constitution.

(3) The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.

(4) The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.

(5) (a) Women have the right to maternity leave with full pay. The duration of maternity leave shall be determined by law taking into account the nature of the work, the health of the mother and the well-being of the child and family.

(b) Maternity leave may, in accordance with the provisions of law, include prenatal leave with full pay.

(6) Women have the right to full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women.

(7) Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.

(8) Women shall have a right to equality in employment, promotion, pay, and the transfer of pension entitlements.

(9) To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity. (Emphasis added.)

- **Ghana - Constitution of Ghana**

Ghana's constitution states that "traditional practices" harmful to people's health and well-being should be eliminated.

Chapter 1, Paragraph 1(2) - The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void.

Chapter 5, Paragraph 26 –

(1) Every person is entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution.

(2) All customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.

Chapter 6, Paragraph 39 -

(1) Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

(2) The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular that traditional practices which are injurious to the health and well-being of the person of the person are abolished.

(3) The State shall foster the development of Ghanaian languages and pride in Ghanaian culture.

(4) The State shall endeavour to preserve and protect places of historical interest and artifacts. (Emphasis added.)

- **Uganda - The Constitution of Uganda**

Uganda's constitution declares that customs or traditions that are "against the dignity or welfare or interest of women or which undermine their status" are prohibited.

Chapter 1, Article 2. Supremacy of the Constitution.

(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

Chapter 4, Article 29. Protection of freedom of conscience, expression, movement, religion, assembly and association.

(1) Every person shall have the right to—

(a) freedom of speech and expression which shall include freedom of the press and other media;

(b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;

(c) freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution; (Emphasis added)

(d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and

(e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

Chapter 4, Article 33. Rights of women.

(1) Women shall be accorded full and equal dignity of the person with men.

(2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.

(3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.

(4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

(5) Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

(6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution. (Emphasis added)

- **India – [Constitution of India](#)**

Female infanticide is a violation of Article 21 of the Indian Constitution, which recognizes that every person has the right to life. See: [No More Excuses](#), p. 18.

- **Benin - [Constitution of Benin](#)**

Pursuant to the constitution, cultural and religious freedoms may be limited under the law:

Article 23 states that “[e]very person has the right to freedom of thought, of conscience, or religion, of creed, of opinion and of expression with respect for the public order established by law and regulations.” (Emphasis added).

- **Burkina Faso – [Constitution of Burkina Faso](#)**

The constitution guarantees equality and protection of life, safety and physical integrity for women. Article 7 states that cultural and religious practices must conform to constitutional protection of individual rights.

“The freedom of belief, of non-belief, of non-belief, of conscience, of religious, philosophical opinion, of religious exercise, the freedom of assembly, the free practice of custom...shall be guaranteed by the present Constitution subject to respect of the law, of the public order, of good morals and of the human person.” (Emphasis added).

Harmonization of new legislation with existing law (formal and customary)

- When enacting legislation on harmful practices, drafters should also review and either repeal or reform existing laws that are contrary to or create barriers to the equality of women and girls and the elimination of harmful practices. Thus, any new legislation should include a provision requiring that laws, in any area, that conflict with the underlying goal of women's equality, safety and education, be repealed or amended.
- To this end, drafters should develop and review laws in other areas to ensure they reflect a commitment to establishing the equality of women and girls. Examples include:
 - Development of uniform civil laws relating to family and property law that have clear supremacy to conflicting customary or religious law;
 - Development of laws that prevent discrimination against minorities;
 - Development of immigration laws that protect the rights of women and girls;
 - Development of laws that protect the advancement of women in employment, and ensure the right to health and education for women and girls; and
 - Development of laws that direct all sectors of society to provide support for women and girls to empower themselves to participate in protecting their human rights and achieving an end to harmful practices.

Amendments to laws

- In order to be fully effective, the adoption of new legislation on violence against women should be accompanied by a review and amendment, where necessary, of all other relevant laws to ensure that women's human rights and the elimination of violence against women are consistently incorporated. ([UN Handbook](#) 3.1.6)
- Legislation should provide for the amendment and/or removal of provisions contained in other areas of law, such as family and divorce law, property law, housing rules and regulations, social security law, and employment law that contradict the legislation adopted, so as to ensure a consistent legal framework that promotes women's human rights and gender equality, and the elimination of violence against women. ([UN Handbook](#) 3.1.6)
- Drafters should anticipate and allow for amendments to the various laws against harmful practices as unintended consequences and unforeseen types of harmful practices develop.
 - For example, having medical personnel perform female genital mutilation has been presented as a misguided effort to legitimize the practice of female genital mutilation or make it seem safer. This "medicalization" of female genital mutilation must be considered and accounted for in drafting new laws and amendments to old legislation. Legislation should not only explicitly make medical personnel liable for performing female genital mutilation, but criminal penalties should actually be enhanced and

individuals should face administrative penalties, such as loss of license to practice medicine, as well. (See: [Female Genital Mutilation](#))

- Drafters should review and amend laws as events such as migration, globalization, conflict situations, as well as the changes in modern technology and other developments, change the types of harmful practices that exist as well as the way harmful practices are executed.
 - For example, increased access to medical technology has allowed more individuals to easily determine the sex of a fetus. In turn, this has increased the misuse of such technology to facilitate sex-selective abortions based on son-preference. In response, India's [Pre-Natal Diagnostic Techniques \(PNDT\) Act of 1994 \(and amendments\)](#) prohibits and penalizes the use of any form of technology to determine and disclose of the sex of a fetus. The Act was initially enacted in 1994 to stop sex-selective abortions and curb the growing gender imbalance in India's population. Due to modern developments, however, the Act continues to be amended to address newer technologies which allow for the selection of sex before and after conception.

CASE STUDY:

Sierra Leone – Forced Marriage: A crime against humanity

The [Good Practices on Harmful Practices Expert Group Report](#) identified conflict and post-conflict situations as factors that perpetuate harmful practices such as forced marriage. The Report highlighted the case of [Prosecutor vs. Brima, Kamara and Kanu \(AFRC Case\)](#) in Sierra Leone as a “landmark judgment recognizing forced marriage as a crime against humanity under international criminal law for the first time in history.” In that case, the Special Court for Sierra Leone focused on the elements of force and coercion, the presence of a conjugal relationship, and harm to the victim within the context of the Sierra Leonean armed conflict. During the conflict, combatants abducted girls and women to act as “bush wives.” These women and girls were subjected to rape, sexual slavery, and forced labor tasks, such as cooking, cleaning and portering. In these cases, the forced marriage involved conditions of sexual slavery and forced labor. The court, however, distinguished the crimes of forced marriage and sexual slavery, defining forced marriage as the “situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.” The court, for the first time in history, prosecuted forced marriage as an “other inhumane act” under crimes against humanity under international criminal law. (See: [Prosecutor vs. Brima, Kamara and Kanu \(AFRC Case\)](#), Special Court for Sierra Leone, 2008, ¶ 190)

Resolving conflict with customary and religious laws

- Harmful practices are deeply rooted in cultural beliefs and practices. The right to enjoy and practice one's culture is a valued human right, but it is not more important than protecting women and children from harmful practices that negate their enjoyment of other recognized human rights. The international legal and policy framework clearly establishes that governments cannot invoke culture, tradition or religion to justify or defend harmful practices. Drafters of new legislation should, therefore, ensure that customary practices and laws do not authorize or condone harmful practices.
- Many countries have multiple legal systems, and formal, customary, and even state-sanctioned customary legal systems may co-exist. Conflicts among these systems, both in the written laws and their application, can arise. While one system may provide protection to women from discrimination, another system may conflict in law or practice to discriminate against women. Drafters should specifically review conflicting customary and religious laws or situations of dual legal systems where civil law operates adjacent to customary or religious laws governing family law or property law which may traditionally discriminate against women. Laws should resolve conflicts between customary and formal laws in a manner that respects survivors' human rights and principles of gender equality. (See: [UN Handbook](#), p.15) Where a constitutional guarantee of supremacy of statutory over customary law does not exist, drafters should consider incorporating a provision in the new legislation that grants primacy to the legal system that is most in compliance with international legal standards. Laws should ensure that any supremacy laws include outreach to local and customary leaders to facilitate the implementation of these guarantees. Laws should ensure that use of a customary adjudication mechanism does not preclude the victim from accessing the formal justice system.
- Drafters should consider prefacing laws condemning harmful practices with reference to international legal obligations requiring states to modify such practices. Under [CEDAW](#), states are obligated to take appropriate measures to modify social and cultural patterns that discriminate against women (Art. 5(a)). The Committee on the Elimination of All Forms of Discrimination against Women [General Recommendation 19](#) states:
[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.
- CEDAW has also expressed concern over practices that uphold culture over eliminating discrimination. In its [Concluding Observations on Nepal's periodic report](#) (1999), CEDAW expressed its concern over the Supreme Court in Nepal

prioritizing the preservation of culture and tradition when interpreting discriminatory laws. Also, the Human Rights Committee has drawn attention to minority rights that infringe upon the rights of women. In [General Comment 28](#), it stated that those “rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights, including the right to equal protection of the law” (¶ 32). The [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) also requires States Parties to prohibit “all forms of harmful practices which negatively affect the human rights of women” and take all necessary legal and other measures to protect women from harmful practices and all other forms violence, abuse and intolerance (Art. 5). Similarly, the African Charter on the Rights and Welfare of the Child requires States to take “all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child,” including customs and practices that discriminate based on sex (Art. 21).

(See: [Honour Crimes Section](#))

(See: [Ensure Constitutional Protection Provisions](#) regarding supremacy of constitution and national laws)

Promising Practice: South Africa's Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (No. 20876), Ch. 2, Art. 8

South Africa's [Promotion of Equality and Prevention of Unfair Discrimination Act](#) prohibits all forms of gender-based discrimination, including female genital mutilation, discriminatory property policies, access to health services, education and employment. It specifically limits traditional, customary or religious practices which perpetuate these and other forms of gender-based discrimination:

Prohibition of unfair discrimination on grounds of gender

8. Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including—

- (a) gender-based violence:*
- (b) female genital mutilation;*
- (c) the system of preventing women from inheriting family property:*
- (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;*
- (e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources:*
- (f) discrimination on the ground of pregnancy;*
- (g) limiting women's access to social services or benefits, such as health, education and social security;*
- (h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;*
- (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour. (Emphasis Added.)*

Considerations for drafting provisions criminalizing harmful practices

- The criminalization of harmful practices may have an important deterrent effect. However, in many countries where the harmful practices discussed in this asset are prevalent, harmful practices have either only recently been criminalized or are still not criminalized.
- When criminalizing harmful practices, it is important to consider the following:
 - Does law enforcement have enough resources and capacity to appropriately implement the new criminal laws. If not, how will this be addressed?
 - Do customary laws support or contradict such legislation? If contradictory, refer to *Resolving Conflict with Customary and Religious Laws* section above and ensure that supremacy of constitutional or national law protections provisions is clearly stated in the new legislation.
 - Has awareness-raising been conducted within the community to ensure that members are aware of the harmful consequences of the practice, the need to abandon it, and the fact that the practice will be criminalized under the new law.
 - Is there approval within the community to allow a victim to take legal action against other community members who may be the perpetrators of the harmful practice?
 - Would implementing a criminal law disproportionately affect and/or alienate one ethnic group?
 - Will the way in which the new criminal offense be implemented be in the best interests of the girl child? This is particularly important considering that many harmful practices, such as female genital mutilation or breast ironing, are perpetrated by or supported by the victims' parents or care-takers, and criminal penalties such as long jail sentences may have significant effect on the interests of the child victim.
- Criminalization can take place by either enacting a law specifically prohibiting the practice, as was done with FGM in Senegal, or through the use of general criminal law provisions that assign penalties for various actions including the specific harmful practice at issue, as was done in France with FGM. Governments choosing the latter must make special efforts to educate the public that what was legal one day could result in criminal prosecution the next.
- In any event, legislation criminalizing specific harmful practices should only be enacted with a corresponding broader governmental strategy to change the underlying social customs and individual beliefs in which these practices are so deeply entrenched.

General considerations for imposing penalties or sanctions

- Legislation should provide a clear definition of the harmful practice it is addressing.
- Legislation should “*provide for effective sanctions against anyone who condones or participates in any ‘harmful practice’, including religious, customary, community and tribal leaders and health professionals, social services providers and education system employees.*” See: [Good Practices on Harmful Practices Expert Group Report](#).
- Legislation should include sanctions against religious, customary and tribal leaders if they promote or endorse the perpetration of a harmful practice on a woman or girl.
- Legislation should include sanctions against medical professionals who have become perpetrators of harmful practices such as female genital mutilation and pre-natal sex selection.
- Legislation should penalize parents or family members who perpetrate or aid and abet the harmful practice.
- Legislation should provide for penalties of prison time, fines and education.
- Legislation should require that sentencing guidelines reflect the gravity of the offense.
- Legislation should provide for enhanced penalties if a victim dies as a result of a harmful practice. The perpetrator should be prosecuted under the murder statutes of the penal code. The specific law on the harmful practice should provide a term of imprisonment and fine which is no less severe than what is provided under the murder statutes of the general penal code, with the exception of capital punishment.
- Legislation should provide for the principle of extraterritoriality in protecting women and girls from harmful practices that are committed abroad, and allow for extradition of perpetrators of harmful practices. For example, Sweden not only prohibits female genital mutilation within its borders, but also punishes any person residing in Sweden who participates in the female genital mutilation in another country that allows the practice. (See: Sweden: [Act \(1982:316\) on Prohibiting the Genital Mutilation \(“Circumcision”\) of Women](#), sec. 3:

Anyone who has committed an offence under the terms of this Act is to be sentenced in a Swedish court of law, even if Chapter 2 Sections 2 or 3 of the [Penal Code](#)... (describing the limited circumstances in which Swedish courts can prosecute, under Swedish law, crimes committed outside the Realm of Sweden) ... are inapplicable.

Clear definitions of harmful practices

Drafters should ensure that the prohibited harmful practices as well as the categories of people who may be liable or responsible under the law are clearly defined in the law.

Broad liability

Legislation should provide for broad liability against those who condone, endorse, participate in or perform a harmful practice including family members, traditional and religious leaders, doctors and other person perpetrating the harmful practice.

Aiding and abetting

Legislation should provide that accomplices who aid and abet the perpetration of harmful practices shall be punished in the same manner as the practitioner of the harmful practice. Legislation should define “accomplice” to include:

- those who bring a girl or woman to the individual who performs the harmful practice;
- those who request the practice to be performed or assist, advise, or procure support for anybody to carry out the practice;
- religious, customary and tribal leaders who promote or endorse harmful practices against a woman or girl; and
- parents or other family members who perpetrate or aid and abet the perpetration of a harmful practice.

Prohibition of medicalization

- Certain harmful practices, such as female genital mutilation and prenatal sex selection, are increasingly being perpetuated by medical practitioners. Drafters should recognize that having these procedures completed by a medical practitioner does not legitimize the harmful practice or make it safer. Harm still results and the underlying discrimination against women is perpetuated. Medical personnel should be explicitly prohibited from performing these and other harmful practices and should face enhanced penalties and loss of their license for performing a harmful practice.
 - Legislation should prohibit the medicalization of any form of harmful practice.
 - Legislation should explicitly state that there is no medical benefit to harmful practices and prohibit medical professionals from conducting any form of harmful practice.

- Legislation should provide for increased penalties for health providers who perform a harmful practice and the practitioner shall be prohibited from practicing his or her profession for a period of time.
- Legislation should explicitly prohibit the medical sector from re-infibulation or “re-closing” a woman after childbirth to her pre-delivery infibulated state.
- The [European Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\), Para 25](#):
Urges firm rejection of pricking of the clitoris and medicalisation in any form, which are being proposed as a halfway house between circumcision and respect for traditions serving to define identity and which would merely lead to the practice of FGM being justified and accepted on EU territory; reiterates the absolute and strong condemnation of FGM, as there is no reason—social, economic, ethnic, health-related or other—that could justify it.
- In addition, both Burkina Faso and Senegal increase penalties for medical professionals who practice FGM.
 - [Burkina Faso Penal Code, Art. 381](#):
The maximum punishment shall be meted out if the guilty party is a member of the medical or paramedical profession. Moreover, he or she may be disbarred from practice by the courts for up to five years.
 - [Penal Code of Senegal \(27.02.1999\), Art. 299 bis](#):
...The maximum punishment shall apply when [the] sexual mutilations have been practiced or facilitated by a member of the medical or paramedical profession....
- The [Pre-Natal Diagnostic Techniques \(PNDT\) Act of 1994 \(and amendments\)](#) in India was enacted to curb the growing trend of diagnostic techniques being misused to facilitate sex selective abortions. The Act prohibits and penalizes medical practitioners or any person who owns a Genetic Counseling Centre, a Genetic Laboratory, a Genetic Clinic, or is employed in any such Centre, Laboratory or Clinic from using pre-natal diagnostic technology to determine and disclose the sex of a fetus.

Punishment of parents or family members

- Parents or family members are frequently the perpetrator of harmful practices. Parents often perform or seek out a practitioner to perform female genital mutilation on their daughters. In the case of breast ironing, it is often the mother who performs the act in an effort to keep her daughter from looking like she is entering puberty. Punishment or sanctions should include parents and family members who aid and abet in the harmful practice. However, consideration should be given first and foremost to the best interests of the child. Prison

sentences, large fines, or long separations may have a serious impact on the child.

- Legislation should provide for criminal liability of parents, family members and others who:
 - Perform a harmful practice;
 - Instruct, incite, support or otherwise aid and abet others in subjecting a woman or girl to a harmful practice; and/or
 - Fail to report the risk or occurrence of a woman or girl being subjected to a harmful practice.
- The section on [Female Genital Mutilation](#) contains examples of country laws that provide for liability for parents and family members who perform or aid and abet an act of female genital mutilation.
- However, some countries in their sentencing policies and practice focus on the “the best interests of the child” as the guiding principle when assessing criminal liability for parents who procure female genital mutilation for their daughters. Imposing long prison sentences may cause a greater burden for the child. Other penalties may be sought for parents in those cases. France, for example, has prosecuted parents for obtaining female genital mutilation for their daughters, but generally criminal penalties have not been assigned. Instead, the most severe penalties have been imposed on the practitioner while parents received a lighter or suspended sentence and served little or no jail time.
- Efforts should be made to change the underlying beliefs that perpetuate harmful practices and empower girls, women and their families to resist the societal pressures to pursue such harmful practices.

Examples of punishment of parents

- **France:** The French criminal court (Cour d’Assises) has prosecuted several cases of FGM since 1991 under [Article 222](#). In 1999, France prosecuted a Malian woman named Hawa Greou for performing FGM on 48 girls. The court also prosecuted 26 parents who brought their daughters to Hawa Greou for the procedure. Greou received a prison term of eight years, and the parents received terms ranging from a three-year suspended sentence to two years in prison. (BBC, [World: Europe: Woman Jailed for 48 Circumcisions](#), 17 February 1999)
- **Denmark:** In 2009, a Danish County Court charged the parents of three girls under section [245A](#) of the Danish Criminal Code. The parents were prosecuted for bringing two daughters to Sudan for a female circumcision and for intending to bring a third daughter to be circumcised. The father was acquitted but the mother was convicted and sentenced to two years in prison. The court, however, suspended 1 year and 6 months of the two year sentence with a period of three years probation and required the mother to pay compensation to each of the three daughters. (Government of Denmark, [First Case Regarding Female Genital Mutilation](#), United Nations Secretary-General’s Database on Violence against Women 2009)

Extraterritoriality and extradition

- Legislation should prohibit the practice of taking girls out of a country where a harmful practice is illegal to a country where the practice is allowed.
- Legislation should provide that persons who commit a harmful practice or procure, aid or counsel another who is not a resident of the country to commit the harmful practice outside of the borders of their country shall be pursued, prosecuted and punished.
- Drafters should not require that the harmful practice be a crime in the country where it was committed in order to be able to prosecute individuals for behavior related to the harmful practice.
- Drafters should allow for extradition of perpetrators of harmful practices.
- Drafters should review diplomatic protocols to ensure that victims have access to consular assistance in third countries. Drafters should ensure that policies governing diplomatic assistance to dual nationals heed the country of habitual residence or greatest ties rather than defer to notions of state non-responsibility.
- The following examples include principles of extraterritoriality and extradition in legislative language protecting women and girls against female genital mutilation. They can also be found within the section on [Female Genital Mutilation](#):
 - [European Parliament Resolution on Female Genital Mutilation \(2001/2035\(INI\)\), Para. AA, 11:](#)
The European Parliament . . . [c]alls on the Member States . . . to pursue, prosecute and punish any resident who has committed the crime of female genital mutilation, even if the offence was committed outside its frontiers (extraterritoriality)
 - [New Zealand: Crimes Act 1961 No. 43, sec. 204B - Further offences relating to female genital mutilation:](#)
 - (1) *Every one is liable to imprisonment for a term not exceeding 7 years who, with intent that there be done, outside New Zealand, to or in relation to any child under the age of 17 years (being a child who is a New Zealand citizen or is ordinarily resident in New Zealand), any act which, if done in New Zealand, would be an offence against section 204A [defining the offence of FGM],—*
 - (a) *causes that child to be sent or taken out of New Zealand; or*
 - (b) *makes any arrangements for the purposes of causing that child to be sent or taken out of New Zealand.*
 - (2) *Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, aids, incites, counsels, or procures the doing, outside New Zealand, in relation to any person who is a New Zealand citizen or is ordinarily resident in New Zealand, of any act which, if done in New Zealand, would be an offence against section 204A, whether or not the act is in fact done.*

(3) Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, incites, counsels, procures, or induces any person who is a New Zealand citizen or is ordinarily resident in New Zealand—

(a) to submit, outside New Zealand, to any act which, if done in New Zealand, would be an offence against section 204A; or

(b) to acquiesce in the doing, outside New Zealand, on that person, of any such act; or

(c) to permit any such act to be done, outside New Zealand, on that person,—

whether or not, in any case, the act is in fact done.

- UK: [Female Genital Mutilation Act 2003, Sec. 3 and 4:](#)

3 Offence of assisting a non-UK person to mutilate overseas a girl's genitalia

3(1): A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom national or permanent United Kingdom resident to do a relevant act of female genital mutilation outside the United Kingdom.

3(2): An act is a relevant act of female genital mutilation if—

(a) it is done in relation to a United Kingdom national or permanent United Kingdom resident, and

(b) it would, if done by such a person, constitute an offence under section 1 [definition of the offence of FGM].

4 Extension of sections 1 to 3 to extra-territorial acts

4(1): (1) Sections 1 to 3 extend to any act done outside the United Kingdom by a United Kingdom national or permanent United Kingdom resident.

- [Canadian Criminal Code, sec. 273.3:](#)

(1) No person shall do anything for the purpose of removing from Canada a person who is ordinarily resident in Canada and who is ...

...(c) under the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section...268 [criminalizing excision]...in respect of that person.

- [Victoria, Australia: Crimes Act 1958, Sec. 33 - Offence to take a person from the State with the intention of having prohibited female genital mutilation performed:](#)

(1) A person must not take another person from the State, or arrange for another person to be taken from the State, with the intention of having prohibited female genital mutilation performed on the other person.

Penalty: Level 4 imprisonment (15 years maximum).

(2) In proceedings for an offence under subsection (1), proof that-

(a) the accused took the person, or arranged for the person to be taken from the State; and

(b) the person was subjected, while outside the State, to prohibited female genital mutilation-

is, in the absence of proof to the contrary, proof that the accused took the person or arranged for the person to be taken from the State with the intention of having prohibited female genital mutilation performed on the person.

Promising Practice:

Norway – New rules for entering into marriage outside Norway

Norway promulgated new [rules](#) governing marriages outside of Norway when at least one of the spouses is a Norwegian citizen or permanent resident. A marriage that takes place outside of Norway will not be recognized in Norway if:

- One of the parties is under the age of 18 at the time of the marriage;
- The marriage is entered into without both parties being physically present during the marriage ceremony, e.g. a marriage by proxy or telephone marriage; or
- One of the parties is already married.

If any of these factors are present, the couple may be denied family reunification to live in Norway. Conditioning validity of the marriage on the spouses' ages at the time of marriage, rather than at the time of the application for family reunification, is an important safeguard against child marriages. The rules are available in Norwegian, English, Somali, Sorani, Arabic and Urdu.

Diplomatic protocols

- Drafters should review diplomatic protocols to ensure that victims have access to consular assistance in third countries. Drafters should ensure that policies governing diplomatic assistance to dual nationals heed the country of habitual residence or greatest ties rather than defer to notions of state non-responsibility. Women and girls who possess dual citizenship are particularly at risk of being denied access to consular assistance. A State Party to the [Convention on Certain Questions relating to the Conflict of Nationality Laws](#) (1930) is barred from offering “diplomatic protection to one of its nationals against a State whose nationality such person also possesses” (Art. 4). Drafters whose states have ratified this convention may find it deters assistance to victims of harmful practices such as forced marriage who have been removed from their country of residence to another country of nationality for purposes of forced marriage. Drafters should take note of commentators’ view that the principle articulated in Article 4 is premised on the outdated doctrine of non-state responsibility; dominant and effective nationality principles provide that, regardless of dual nationality, the state to which the person has the greatest connection may offer diplomatic protection. (See: Sara Hossain and Suzanne Turner, Abduction for Forced Marriages, Rights and Remedies in Bangladesh and Pakistan, Int’l Fam. L., April 2001 (noting that commentary in the Explanatory Report of the European Convention on Nationality provides that a state may offer diplomatic protection to one of its nationals who holds dual nationalities))
- States offering diplomatic protection to victims of harmful practices, such as forced marriage, in other countries must ensure appropriate guidelines and trainings are in place for consulate officials. Recommendations include: providing appropriate guidelines to consulate officials, in particular regarding assisting dual nationality holders and not contacting relatives in the country of residence; training for consulate staff on women and girls’ human rights; establishing a database to monitor forced marriage cases; developing an intervention protocol modeled on child abduction responses; entering into consular agreements with other countries to ensure victims are guaranteed protection. (See: S. Hossain and S. Turner, Abduction for Forced Marriages, Rights and Remedies in Bangladesh and Pakistan, Int’l Fam.L., April 2001, 1-64, pp.15-24) See: [Forced and Child Marriage Section](#)

Mitigation

- Legislation should provide that no form of mitigation shall be allowed as a defense to harmful practices. The defense of culture, honour or religion should be specifically prohibited.
- The following examples address the practice of Female Genital Mutilation:
 - The [European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\) P6 TA\(2009\)0161](#) condemns any form or degree of FGM as “an act of violence against women which constitutes a violation of their fundamental rights, particularly the right to personal integrity and physical and mental health, and their sexual and

reproductive health” and states that “such violations can under no circumstances be justified by respect for cultural traditions of various kinds or initiation ceremonies.”

- United Kingdom: [Female Genital Mutilation Act 2003, Sec.1 - Offence of female genital mutilation](#):

(1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris.

(2) But no offence is committed by an approved person who performs—

(a) a surgical operation on a girl which is necessary for her physical or mental health, or

(b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.

(3) The following are approved persons—

(a) in relation to an operation falling within subsection (2)(a), a registered medical practitioner,

(b) in relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(4) There is also no offence committed by a person who—

(a) performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and

(b) in relation to such an operation exercises functions corresponding to those of an approved person.

(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual. (Emphasis Added).

- [Victoria, Australia: Crimes Act 1958, Sec.34A - Exceptions to offences under section 32](#)

(1) It is not an offence against section 32 [Offence to perform female genital mutilation] if the performance of the female genital mutilation is by a surgical operation which is-

(a) necessary for the health of the person on whom it is performed and which is performed by a medical practitioner; or

(b) is performed on a person in labour or who has just given birth, and for medical purposes or the relief of physical symptoms connected with that labour or birth, and which is performed by a medical practitioner or a midwife; or

(c) is a sexual reassignment procedure which is performed by a medical practitioner.

(2) For the purposes of subsection (1)(a), in determining whether an operation is necessary for the health of a person, the only matters to be taken into account are those relevant to the medical welfare or the relief of physical symptoms of the person. (Emphasis Added).

- [New Zealand: Crimes Act 1961 No. 43, sec.204A \(Female Genital Mutilation\), Para.4:](#)

In determining, for the purposes of subsection (3), whether or not any medical or surgical procedure is performed on any person for the benefit of that person's physical or mental health, no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice. (Emphasis Added).

Consent

- Legislation should provide that consent of any person of any age or by a minor's parent is not a defense to a violation of legislation against harmful practices. The focus of legislation should be on the empowerment of women to reject harmful practices and enabling a shift in the social norms that support harmful practices and pressure women into undergoing them for themselves or others. The practice of FGM, for example, is so entrenched in social norms and expectations that, without a shift in those underlying norms and individual beliefs, true informed consent to undergo FGM for adult women, completely free from undue pressure, is difficult to ascertain.
- The following examples address the practice of [Female Genital Mutilation](#):
 - Sweden: [Act \(1982:316\) on Prohibiting the Genital Mutilation \("Circumcision"\) of Women, Sec. 1:](#)
An operation may not be carried out on the outer female sexual organs with a view to mutilating them or of bringing about some other permanent change in them ('circumcision'), regardless of whether consent has been given for the operation or not."
 - [Victoria, Australia: Crimes Act 1958, Sec. 34 - Consent not a defence to a charge under sections 32 or 33:](#)
It is not a defence to a charge brought under section [32](#) [Offence to perform female genital mutilation] or [33](#) [Offence to take a person from the State with the intention of having prohibited female genital mutilation performed] to prove that the person on whom the act which is the subject of the charge was performed, or the parents or guardian of that person, consented to the performance of that act.
 - [New Zealand: Crimes Act 1961 No. 43, sec.204A \(Female Genital Mutilation\), Para6](#) *It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.*

Other legal protections and considerations

- Regardless of whether a harmful practice is criminalized, legislation addressing harmful practices should take a comprehensive human rights-based approach. Legislation should include not only criminalization and punishment of the perpetrator, but also “prevention, empowerment, support and protection of the survivor, and mechanisms to ensure its effective implementation” (See: [Good Practices on Harmful Practices Expert Group Report](#), citing [Good Practices in Legislation to Address Violence Against Women, Report of the Expert Group Meeting](#))
- In order to ensure that harmful practices are not just punished but also prevented, legislation should create alternative civil protections and remedies.

Protection orders

- Legislation should include a civil order-for-protection remedy, including an emergency ex parte protection order, for victims under a threat of a harmful practice.
- Legislation should criminalize violations of protection orders.
- Legislation should require a woman’s consent to a petition that has been filed by a third party on behalf of an adult woman, with the exception of when a victim is unable to file a petition herself, due to certain circumstances, such as being falsely imprisoned, in another country, or a vulnerable adult.
- Legislation should allow for third party petitions on behalf of a child only with court permission or appointment of a guardian ad litem.

(See: “[Sample Orders for Protection](#)”, The Advocates for Human Rights, Stop VAW, for information on orders for protection in domestic violence cases. See also: [Domestic Violence Section](#) and [Forced and Child Marriage Section; Forced Marriage \(Civil Protection\) Act 2007 Relevant Third Party](#), Newham Asian Women’s Project, 2008)

Judicial intervention

Drafters should also allow for an individual to seek judicial intervention to avoid undergoing an impending harmful practice.

For example, in Uganda, a country which does not have a criminal penalty for the practice of FGM, a girl upon whom FGM was to be completed successfully obtained intervention of a court to prevent the FGM. [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), Anika Rahman and Nahid Toubia, citing Dr. Josepine Kasolo, Safe Motherhood Initiative in Uganda, Questionnaire (undated, Spring 1998).

Civil lawsuits

- Some harmful practices may be recognized as an injury that gives rise to civil liability.
Civil lawsuits are a valuable supplement or alternative to criminal prosecution, civil protection orders, and other available legal remedies. Depending on the facts of the case and the law of the jurisdiction, the forms of relief available to successful plaintiffs in civil lawsuits may include compensatory damages, punitive damages, declaratory and injunctive relief, and a court order requiring the defendant to pay the prevailing plaintiff's attorney fees. In many legal systems, civil actions have advantages over criminal actions. Civil cases are governed by a lower burden of proof than criminal cases, complainants/survivors have control over the action, and some complainants/survivors consider the types of relief granted in a successful civil lawsuit more helpful than incarceration of the perpetrator. ([UN Handbook](#), 3.12)
- Legislation should allow civil lawsuits against perpetrators of harmful practices.
- Legislation should abolish any obstacles that prevent girls or their parents or guardians, or women from bringing civil lawsuits against a family member who is a perpetrator.
- Legislation should abolish any requirement that the consent of a husband or other family member be obtained in order to bring a civil lawsuit.
- Legislation should allow survivors/complainants to bring civil lawsuits against governmental or non-governmental parties for not exercising due diligence to prevent, investigate or punish harmful practices.
- Legislation should allow survivors/complainants to bring civil lawsuits on the basis of anti-discrimination laws, human rights provisions, or civil rights laws.

Prohibition on the use of harmful traditional dispute resolution mechanisms

- Laws continue to exist in many countries whereby a perpetrator of violence against women is absolved of his crime if he pays the victim or her family or marries the victim. These practices not only deny women victims/survivors justice but also constitute harmful practices in and of themselves. Such is the case with the practice of “payback rape” whereby men who are members of a tribe or family of a woman who has been raped, rape a woman from the tribe or family of the perpetrator as “payback.” Or instances of forced marriage where a woman who has been raped is forced to marry the perpetrator.
- Such harmful dispute resolution practices should be eliminated and should not preclude state prosecution. Legislation to eliminate harmful practices should:
 - require a full investigation and prosecution of harmful practices regardless of any settlements that the victim, her family and the offenders have reached;

- place responsibility for prosecuting harmful practices with the prosecutor and not with the victim or her family (See: [UN Handbook](#), p. 40);
- require pro-arrest and pro-prosecution policies (See: [UN Handbook](#), p. 41); and
- state that harmful practices are non-compoundable offenses, of which prosecution cannot be compromised. (See: [Good Practices on Harmful Practices Expert Group Report](#))

Compensation

Drafters should take steps to address the issue of compensation. Laws should allow criminal sentences to include an order of compensation and restitution from the perpetrator to the victim or her heirs, excluding perpetrators or accomplices to the harmful practice; clearly state that while compensation is a punitive element in violence against women cases, it is not a substitute for other punishments, such as imprisonment, and make provision for a state-sponsored compensation program. (See: [UN Handbook](#), p. 59) In cases where the offender cannot pay the victim compensation, laws should provide for state-sponsored or other compensation for victims who have sustained significant bodily injury or impairment of physical or mental health as a result of the harmful practice. (See: [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), paras. 12-13)

Child protection provisions

Because so many harmful practices are perpetrated against girl children, drafters should acknowledge harmful practices as a form of child abuse and create or amend child protection laws and services to include harmful practices.

The following elements should be established as the core elements in child protection laws and systems to protect against harmful practices.

- Legislation should ensure that there are child welfare laws and policies to prevent child abuse.
- Legislation should identify harmful practices as a form of child abuse.
- Legislation should mandate that the prevention and prosecution of harmful practices are given the same resources as other forms of child abuse.
- Legislation should create a child protection system that contains, at a minimum, survivor support, alternative care options, family support services, justice system responses (see order for protection section below) and referral mechanisms. (See: [UNICEF Child Protection Strategy](#) for all the components necessary to establish a [child protection system](#). See: [Child Protection: A handbook for Parliamentarians](#))

- Legislation should create child protection protocols for each sector that comes in contact with abuse in the form of harmful practices, including social services, police and the judicial system. Such protocols can help in creating dialogue about harmful practices, aid professionals in assessing the level of risk to a child, and in ensuring consistent and appropriate referrals to various services based on the particular circumstances.
- Drafters should also create child protection laws or amendments to laws that allow for state intervention in cases harmful practices against girls by their parents or guardians.
- Legislation should focus on the best interest of the child as opposed to having the primary focus being the punishment or prosecution of the parents or guardian.
- Drafters should provide for an emergency order for protection for children at risk of harmful practices.
- Drafters should provide a mechanism to allow the state to remove a child from the home if the court determines that there is a reasonable fear that a harmful practice has occurred or is likely to occur.
- Legislation should authorize the placement of a child in danger of infliction of a harmful practice in a shelter, refuge or foster home.
- Legislation should authorize the continuing placement of a child in a shelter or foster home until the child can be reconciled with the family, or, if the parent or parents will not give up their intention to have the child subjected to the harmful practice, authorization for the child to continue in shelter or foster care and attend school locally, or attend a boarding school to continue her education.
- Legislation should authorize the suspension of travel authority for the child if the court determines that the parents are considering authorizing the performance of a harmful practice or if the court determines that the child or a responsible adult has a reasonable fear that the parents are considering authorizing the performance of a harmful practice.
- Legislation should provide for procedures by which the parents can regain custody of the minor child, including receiving counseling and warnings. Once the minor child has been returned to her parents, legislation should provide for on-going visits to the minor child by social service providers and counselors to ensure the well-being of the minor child. Legislation should provide for counseling of parents to ensure that minor children do not receive pressure to undergo harmful practices.
- If there are multiple daughters in a family and one daughter has been subjected to a harmful practice, legislation should provide for on-going visits to determine the risk of the other children to being subjected to the same or other harmful practices.

- Legislation should provide for periodic physical examinations of a child if a court finds that there are reasonable grounds to suspect a child may be at risk of the harmful practice of FGM.
- Legislation should provide that where court orders are issued for protection against a harmful practice, the order remain in place until the parents have demonstrated at a court hearing that they understand that the harmful practice is illegal and/or has adverse health consequences, and that they will not subject their daughter to the harmful practice.
- Legislation should provide for child-centered legal services, including representation for petitioning for civil or criminal liability victim compensation.
- Legislation should incorporate a presumption that there is no justification for the practice of any harmful practice and it is in the child's best interests to not undergo the harmful practice.
 - In Uganda, for example, [The Children Statute 1996 \(Statute No.6 of 1996\) \[Section 8\]](#) explicitly protects children against harmful practices in general: *Section 8. It shall be unlawful to subject a child to social or customary practices that are harmful to the child's health.*
 - In addition, the [European Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)](#), Paras. 28 and 29, call on Member States to create legislation that focuses on the protection of children from FGM:

The European Parliament:

Calls on the member states to . . . adopt legislative measures to allow judges or public prosecutors to take precautionary and preventive measures if they are aware of cases of women or girls at risk of being mutilated;

Calls on the Member States to implement a preventive strategy of social action aimed at protecting minors without stigmatizing immigrant communities, through public programmes and social services aimed at both preventing these practices (training, education and awareness-raising among the communities at risk) and assisting the victims who have been subjected to them (psychological and medical support including, where possible, free medical treatment to repair the damage); calls also on the Member States to consider, in accordance with child protection legislation, that the threat or risk of being subjected to FGM may justify intervention by the authorities [.]

- Both Kenya's [Children Act of 2001](#) and South Australia's [Children's Protection Act, Section 26B](#), contain language in their child protection legislation to protect against harmful practices:

Kenya, Children Act of 2001:

14. No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to

negatively affect the child's life, health, social welfare, dignity or physical or psychological development.

119. (1) For the purposes of this Act, a child is in need of care and protection - ...

(h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; ...

South Australia's [Children's Protection Act, Section 26B](#)

Protection of children at risk of genital mutilation

26B. (1) If the Court is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.

Examples — The Court might for example make an order—

(a) preventing a person from taking the child from the State; or

(b) requiring that the child's passport be held by the Court for a period specified in the order or until further order; or

(c) providing for the periodic examination of the child to ensure that the child is not subjected to female genital mutilation.

(2) An application for an order under this section may be made by a member of the police force or by the Chief Executive Officer.

(3) The Court may make an order on an application under this section without giving a person who is to be bound by the Court's order notice of the proceedings or an opportunity to be heard in the proceedings.

(4) However, in that case the Court must allow the person against whom the order is made a reasonable opportunity to appear before the Court to show why the order should be varied or revoked.

(5) In proceedings under this section the Court must assume that it is in the child's best interest to resist pressure of racial, ethnic, religious, cultural or family origin that might lead to genital mutilation of the child. See: [Female Genital Mutilation](#), [Child Protection Provisions](#) and [Forced and Child Marriage](#)

Immigration and asylum laws

- Legislation and guiding policies on immigration and asylum for cases involving harmful practices should be developed within the framework of international human rights law. Drafters should ensure that grounds for asylum include gender persecution. Specifically, laws should ensure that a woman or girl may seek asylum on the basis of having been subjected to a harmful practice or that she is at risk of harmful practice. Laws should state that women and girls who are victims of or fear persecution through harmful practices constitute members of a particular social group for asylum purposes. Laws should also provide that a

relative may also seek asylum for seeking to protect a woman or girl from a harmful practice. Where a conflict between women's human rights and cultural rights arises, laws should clearly state that women's human rights prevail in determining asylum grants. (See: [Good Practices on Harmful Practices Expert Group Report](#))

- Countries should ensure that survivors of harmful practices not face deportation or other negative immigration consequences when reporting crimes of violence to police and other officials. Drafters should ensure that laws allow victims of violence to independently and confidentially apply for legal immigration status. (See: [Good Practices in Legislation to Address Violence Against Women, Report of the Expert Group Meeting](#), p. 37)

Guidelines and protocols for asylum officers

- The [UN Handbook](#) recommends that laws require the ministerial branch responsible for asylum procedures consult with police, prosecutors, judges, health and education professionals to develop regulations, guidelines and other protocols for implementation within a specified timeframe of the law's entry into force (p. 20-21). Drafters should ensure that the relevant government body work in coordination with other professionals and should draw upon the [UN Guidelines on International Protection: Gender Related Persecution within the Context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#). Those responsible for considering asylum requests should:
 - Interview female asylum-seekers separately;
 - Provide women asylum-seekers with information about and access to the asylum process, in a way and language understandable to them;
 - Provide interviewees with a choice of interviewers and interpreters of their same sex and who are aware of cultural, religious or social sensitivities;
 - Offer an open and reassuring environment;
 - Make introductions, explain persons' roles, making clear he or she is not a trauma counselor, explain the interview purpose and emphasize confidentiality;
 - Maintain a demeanor that is neutral, compassionate and objective with minimal interruptions;
 - Ask open-ended and specific questions, keeping in mind that women and girl asylum applicants may not associate harmful practices they are fleeing with questions about torture;
 - Be open to stopping and scheduling subsequent interviews should the claimants' emotional needs require;
 - Allow for adequate preparation to build confidence and trust, as well as allow the officer to pose the right questions;
 - Collect relevant information from the country of origin;

- Avoid allowing the claimant's type and level of emotion to influence credibility. Recognize that exact details of the act of rape, sexual assault, or harmful practice, may not be necessary, but focus on the events prior to and during the violation, the context and other details, and the possible motivation of the perpetrator; and
- Provide referrals to psychosocial counseling and support services. Strive to make available psycho-social counselors prior to and following the interview.

(See: [Domestic Violence, Trafficking in Women and Girls, Female Genital Mutilation, Forced and Child Marriage, Honour Crimes](#))

- Also, laws should provide trainings for asylum and immigration officers on gender-sensitive issues and customs and practices. Trainings should increase officers' understanding of the dynamics of harmful practices, as well as those customs and practices that place women and girls at risk for harmful practices. At a minimum, trainings should include the following basic information about common ways women are persecuted:
 - Violations of social mores or failing to comply with cultural or religious norms that may result in harm, abuse or harsh treatment distinguishable from the treatment given the general population. Applicants frequently are without meaningful recourse to state protection.
 - A woman's claim may be based on persecution particular to her gender. Such a claim may be analyzed and approved under one or more grounds. For example, rape, sexual abuse, domestic violence, infanticide and genital mutilation are forms of mistreatment primarily directed at girls and women and they may serve as evidence of past persecution on account of one or more of the grounds for which asylum is granted.
 - Societal expectations that require women to live under the protection of male family members. The death or absence of a spouse or other male family members may render a woman even more vulnerable to abuse.
 - Survivors of rape or other sexual abuse may face stigmatization from their community. They may also be at risk for additional violence, abuse or discrimination because they are viewed as having brought shame and dishonour on themselves, their families, and communities.

(See: [Law and Policy: United States](#) (Stop VAW, Advocates for Human Rights) and [Considerations for Asylum Officers Adjudicating Asylum Claims from Women](#), Memorandum to All INS Officers/HQASM Coordinators from Phyllis Coven, Office of International Affairs, May 26, 1995, p. 4.)

Promising Practice: Canada - [Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution](#)

The Immigration and Refugee Board of Canada published [Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution](#), providing a 4-part framework through which to assess claims: 1) Assess whether the harm feared constitutes persecution; 2) determine whether the grounds for fear fall under any of the five grounds set forth in the UN Refugee Convention; 3) determine whether the fear is well-founded, and; 4) determine whether there is an option of internal flight. The Canadian adjudication guidelines on this issue are, for the most part, in alignment with UNHCR guidance, and several countries have followed the Canadian model in addressing these issues. (See: [Law and Policy: Canada](#) (Stop VAW, Advocates for Human Rights))

Victim services

Protection, support and assistance for victims

- Victims may include the direct target of the harmful practice, as well as her immediate family. (See: [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), ¶ 8) However, when drafting provisions on the rights of victims of harmful practices, drafters should take into account that her immediate family may be the perpetrators or accomplices to the crime. Laws should clearly delineate that, for purposes of this section, victims do not include any person who perpetrated, authorized, aided, abetted or otherwise solicited the harmful practice, regardless of their relationship to the victim.
- Drafters should ensure that laws include provision for funding for comprehensive and integrated support services to assist victims of harmful practices crimes.

For example, with regards to honour crimes, the Council of Europe Parliamentary Assembly [Resolution 1681](#) (2009) recommends that states provide shelter that is geographically accessible to victims, develop long-term physical and psychological support programs for victims, facilitate economic independence of victims, and provide police protection and a new identify, if needed. (See: [Honour Crimes](#))

- Drafters should provide for a free, 24-hour hotline that is accessible from anywhere in the country, offers assistance in multiple languages, and is staffed by persons trained in issues related to harmful practice. (See: [Crisis Centers and Hotlines](#), The Advocates for Human Rights, Stop VAW)

Promising Practice: Netherlands – Hotline for immigrant women

The Allochtone Vrouwentelefoon Oost Nederland hotline provides support assistance to immigrant women. The telephone line is untraceable, free-of-charge, and staffed by volunteers who collectively speak ten languages. (See: Honour Related Violence: European Resource Book and Good Practice, 2005, p. 127. See: [Honour Crimes](#))

- Drafters should provide sufficient shelters for victims of harmful practices located in both rural and urban areas, which can accommodate victims and their children for emergency stays and which will help them to find a refuge for longer stays. (See: [Shelters and Safe Houses](#), The Advocates for Human Rights, Stop VAW). The decision to stay at a shelter should always be made voluntarily by the victim. Drafters ensure that special accommodation is made for girls under 18 years of age who are at risk for harmful practices. Shelter policies and accommodations should take into account the special needs of immigrant women and girls.
- Legislation should provide adequate resources for shelters to provide resources and support to victims of harmful practices. If shelters for domestic violence are used to receive victims of harmful practices, shelter workers and advocates should be adequately trained to address issues specific and unique to various harmful practices.
- Drafters should repeal any laws or orders that allow the practice of detaining women who are victims of harmful practices. The focus should be on arresting the perpetrators rather than detaining or relocating the victims. Drafters should adopt laws ordering the immediate release of victims of harmful practices who have been detained without charge, process or review; repeal laws that precondition a woman's release on the custody of a male relative or husband; and, upon release, ensure victims' full protection and facilitate voluntary placement in a shelter for women victims of violence, if the victim so desires.
- (See also [CASE STUDY](#)): Where shelters are lacking, some governments have incarcerated victims in prisons to protect them from honour crimes. This practice should be avoided. For example, in Jordan, no shelters exist for victims of honour crimes, and state authorities often place these women in involuntary detention in the Jweideh Correctional and Rehabilitation Center. (See: [U.S. Department of State Country Human Rights Report: Jordan](#) (2008)) An administrative governor may detain without due process any person in protective custody to ensure public safety, a practice regularly applied to females who are at risk of being subjected to honour-based violence. Once detained under the governor's order, only his consent will secure her release, which is generally granted only when he believes she can leave safely and a male relative agrees to assume responsibility for her. (See: Human Rights Watch, [Honoring the Killers: Justice Denied for "Honor" Crimes in Jordan](#), 2004, pp. 24-27)
- Drafters should provide one crisis center for every 50,000 population, with trained staff to provide support, legal advice, and crisis intervention counseling for victims of harmful practices, including specialized services for particular groups

such as immigrants. (See: [Crisis Centers and Hotlines](#), The Advocates for Human Rights, Stop VAW)

- Crisis centers should be prepared and adequately trained to deal with victims before, during and after the harmful practice.
- Accreditation standards for the assistance centers described above should be developed in consultation with NGOs and advocates working directly with complainants/ survivors.
- Drafters should provide for access to health care for immediate injuries and long-term care including reproductive health care and HIV prophylaxis. (See: The Advocates for Human Rights, Stop VAW Sections on:
 - [Role of Health Care Providers](#)
 - [Confidentiality and Support](#)
 - [Screening and Referral](#)
 - [Documentation and Reporting](#)
 - [Health Care Response](#))
- Health care should be adequately resourced to address the particular injuries, such as burns or disfigurement that victims of harmful practices may have sustained. Victims of FGM should receive services for their immediate injuries but also for the long-term consequences of the practice. (See: [Female Genital Mutilation](#))
- As with domestic violence, a coordinated community response is an essential component of the response to harmful practices. (See: [Domestic Violence](#) and [Female Genital Mutilation](#). (See: the United Nations expert group report entitled "[Good practices in legislation on violence against women](#)" Section 6 on protection, support, and assistance to survivors; [Coordinated Crisis Intervention](#), Stop VAW, The Advocates for Human Rights).
- Drafters should provide for aid, including shelter, clothing and food, for the children of a victim of harmful practices in the shelters described above.
- A state agency should be assigned to establish the aid centers described above, by providing general guidelines or standards, and the state agency should be mandated to fund all of the above services.

Promising Practice: United Kingdom - UK's Women's National Commission

The [UK's Women's National Commission](#) is a national body that liaises between the women's rights advocates and government to promote women's equality. The commission is state-funded yet free to comment on government policy. The Women's National Commission established a [Violence Against Women Working Group](#), with two sub-groups on sexual violence and domestic violence, which seeks:

1. To promote understanding and awareness of violence against women and effect changes in laws, policy and practice;
2. To monitor implementation of Government Action Plans;
3. To co-ordinate Women's National Commission member views on violence against women and to ensure that these views are represented to policy-makers;
4. To liaise with other Women's National Commission Groups on relevant aspects of work;
5. To produce reports in response to national and international developments; and
6. To liaise with Government departments, other non-departmental public bodies, and relevant NGO policy working groups.

(See: [United Nations Handbook for legislation against women](#), 3.6.1. See also: UN Model Code VII B)

Public awareness and education

- Legislation should establish and fund public awareness measures and trainings on harmful practices and women's human rights aimed at all sectors including health care, education, judicial system, social services and the community at large.
- Legislation should require training on women's human rights and harmful practices and their consequences for all religious, customary, community and tribal leaders.
- Legislation should require that state-registered religious officials receive training on women's human rights and harmful practices and their consequences during their vocational trainings.
- Legislation should require that health professionals in all areas, especially those working in maternity, obstetrics, gynecology and sexual health, receive training on women's human rights and harmful practices, including their role in preventing and not practicing harmful practices, identifying victims of harmful practices and sensitively providing services to those victims.
- Legislation should require and provide for training teachers at the primary, secondary and higher education levels on women's human rights and harmful

practices. Training should cover teachers' role in creating awareness among their students and the community regarding particular harmful practices, as well as identifying and sensitively providing or referring services to victims.

- Public awareness and education are essential to changing social and cultural norms which perpetuate harmful practices. Training religious and community leaders who are influential in the society is also necessary to incorporate them in the process of changing cultural beliefs and practices. Women and girls should be supported in their efforts to empower themselves and demand respect for their human rights. In addition, all members of society should be made aware of the negative consequences of harmful practices. It should be clarified that these harmful practices impact not just the women and girls but the larger community as well. Public awareness should focus on preventing further harm to the victims of harmful practices as well as discussions about the overall importance of equality and human rights for all, including women and girls.
- Creating public awareness regarding the Convention on the Rights of the Child (CRC) is specifically mandated by the [Committee on the Rights of the Child \(2003\)](#):

Article 42: Making the Convention known to adults and children

“States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”

Experts also recommend:

In line with the CRC Committee’s proposal, States should develop a comprehensive strategy for disseminating the knowledge of the CRC throughout society, including providing children with information of sources of help and advice. Furthermore, the Committee puts special emphasis on incorporating learning about the CRC and human rights in general into the school curriculum at all stages. All those working with and for children are required to know the CRC and the important role of media in disseminating information on the CRC.

It is imperative for State agencies to cooperate with non-state actors including NGOs and CBOs in raising awareness in the communities. State agencies may be viewed with suspicion by the communities, and local NGOs and CBOs which have deep knowledge about the communities and are trusted by the people may be the most effective catalysts for change. (See: [No More Excuses](#), p. 26)

Promising Practices:

Turkey: “Raising Awareness and Increasing Capacity of Religious Leaders” Project

In an effort to incorporate religious leaders in the fight against “honour” crimes, the Education Group at Amnesty International Turkey created a Women’s Human Rights Education project called “Raising Awareness and Increasing Capacity of Religious Leaders.” Project developers determined that given the fact that ninety percent of the Turkish population is Muslim, religious leaders have a strong influence in the society and have access to large numbers and varied groups of individuals. The Project focused on training staff of the Turkish Presidency of Religious Affairs, which in turn provides required training, credits and certifications for religious officials throughout the country. These religious leaders then influence the public at large with the trainings they receive. The Project implemented trainings on national and international human rights standards against discrimination and violence against women, instruments to prevent violence against women, raising awareness of women’s human rights and their role in creating the necessary improvements of cultural, social and economic rights for women.

(See: [Good Practices on Harmful Practices Expert Group Report](#), p. 13; Leyla Pervizat, [Tackling Honour in the Aftermath with a Good Practice](#), Expert Paper, p. 9. (Hereinafter [Pervizat Expert Paper](#)))

Italy’s Law No. 7/2006 on Female Genital Mutilation, Article 4

Article 4 of [Italy’s Law No. 7/2006 on Female Genital Mutilation](#) (in Italian), mandates training for health professionals as well as the creation and adoption of regulations to that end. The law also provides 2.5 million euros for the implementation of the required training.

(See: [Good Practices on Harmful Practices Expert Group Report](#), p. 14)

United Kingdom: Multi-agency Practice Guidelines: Handling Cases of Forced Marriage

The United Kingdom’s Forced Marriage Unit, in collaboration with other agencies created the [Multi-agency Practice Guidelines: Handling Cases of Forced Marriage](#). The Guidelines set forth a multi-agency response to addressing forced marriage and provides advice and support for practitioners who work with children and adults in order to protect them from forced marriage. The Guidelines present information that is necessary for all agencies as well as specialized information for particular sectors which may most often have first contact with victims of forced marriage, including health professionals, teachers and staff at schools, colleges and universities, police officers, children and adult social services, and housing authorities.

Drafting legislation on specific harmful practices

Legislation specific to many harmful practices as well as any review of the effectiveness of such legislation is limited. General principles relevant to multiple forms of harmful practices have been set forth above. Below are some limited legislative considerations on specific harmful practices. Drafters should refer to the relevant sections of this Knowledge Asset to best tailor legislation on the harmful practices of female genital mutilation, forced and child marriage, maltreatment of widows, honor crimes and dowry-related violence to their country context.

Son preference / female infanticide / sex-selective abortions

- In many countries there is a deeply rooted cultural preference for male children. Costly dowries, discriminatory property and family laws, and the perception that female children are not a good “investment” often makes families prefer the birth of a male child. As a result, in many countries, harmful practices exist which ensure the birth of male children and/or result in the neglect or killing of the female children. Such gender inequality and the low status of women result in sex-selective abortions or the practice of killing girl babies after they are born. Modern technology has exacerbated the prevalence of sex-selective abortions. In countries where son preference, female infanticide, and sex-selective abortions are common, the gender ration of the population is significantly skewed. Experts link this imbalance with increases in other forms of gender violence such as rape and forced marriage. (See: [No More Excuses](#), p. 16-17)
- Legislation addressing these forms of harmful practice should include the following elements:
 - Legislation should condemn son preference, female infanticide and sex-selective abortions;
 - Legislation should penalize anyone who performs female infanticide or sex-selective abortions, specifically including medical and non-medical personnel among those who should be penalized;
 - Legislation should penalize those who aid and abet this harmful practice, specifically including family members among those who may be penalized;
 - Legislation should establish and fund training for all sectors and public awareness about this harmful practice and its consequences;
 - Legislation and other practices that perpetuate this harmful practice, such as dowry and discriminatory laws on succession and inheritance, should be amended or abolished; and
 - Legislation should not penalize women who are forced to undergo sex-selective abortions and should focus instead on persons who pressure, aid or abet the practice.

Promising Practice: *United Nations Sub-Commission on the Promotion and Protection of Minorities [Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children](#)*

The United Nations Sub-Commission on the Promotion and Protection of Minorities adopted a [Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children](#). The Plan sets forth the following as a plan to address the specific harmful practice of son preference, female infanticide, and sex-selective abortions:

Son preference

(14) *The family being the basic institution from where gender biases emanate, wide-ranging motivational campaigns should be launched to educate parents to value the worth of a girl child, so as to eliminate such biases.*

(15) *In view of the scientific fact that male chromosomes determine the sex of children, it is necessary to emphasize that the mother is not responsible for selection. Governments must, therefore, actively attempt to change the misconceptions regarding the responsibilities of the mother in determining the sex of the child.*

(16) *Non-discriminatory legislation on succession and inheritance should be introduced.*

(17) *In the light of the dominant role religion plays in shaping the image of women in each society, efforts should be made to remove misconceptions in religious teachings which reinforce the unequal status of women.*

(18) *Governments should mobilize all educational institutions and the media to change negative attitudes and values towards the female gender and project a positive image of women in general, and the girl-child in particular.*

(19) *Immediate measures should be taken by Governments to introduce and implement compulsory primary education and free secondary education and to increase the access of girls to technical education. Affirmative action in this field should be adopted in favour of the promotion of girls' education to achieve gender equity. Parents should be motivated to ensure the education of their daughters.*

(20) *Considering the importance of promoting self-esteem as a prerequisite for their higher status of women in the family and the community, Governments should take effective measures to ensure that women have access to and have control over economic resources, including land, credit, employment and other institutional facilities.*

(21) *Measures must be taken to provide free health care and services to women and children (in particular, girls) and to promote health consciousness among women with emphasis on their own basic health needs.*

(22) *Governments should regularly conduct nutritional surveys, identify nutritional gender disparities and undertake special nutritional programmes in areas where malnutrition in various forms is manifested.*

(23) *Governments should also undertake nutritional education programmes to address, inter alia, the special nutritional needs of women at various stages of their life cycle.*

(24) *As son preference is often associated with future security, Governments should take measures to introduce a social security system especially for widows, women-headed families and the aged.*

(25) Governments are urged to take measures to eliminate gender stereotyping in the educational system, including removing gender bias from the curricula and other teaching materials.

(26) Governments should encourage by all means the activities of non-governmental organizations concerned with this problem.

(27) Women's organizations should mobilize all efforts to eradicate prejudicial and internalized values which project a diminished image of women. They should take action towards raising awareness among women about their potential and self-esteem, the lack of which is one of the factors for perpetuating discrimination.

(28) Public opinion makers, national institutions, religious leaders, political parties, trade unions, legislators, educators, medical practitioners and all other organizations should be actively involved in combating all forms of discrimination against women and girls.

(29) Gender disaggregated data on morbidity, mortality, education, health, employment and political participation should be collected regularly, analysed and utilized for the formulation of policy and programmes for girls and women.

In addition, the Plan states:

(49) Female infanticide and female foeticide should be openly condemned by all Governments as a flagrant violation of the basic right to life of the girl-child.

Promising Practice: India – The Pre-Natal Diagnostic Techniques (PNDT) Act of 1994 (and amendments)

Under the [Pre-Natal Diagnostic Techniques \(PNDT\) Act of 1994 \(and amendments\)](#) sex-selective abortions are illegal in India. As set forth in the preamble, the Act was enacted in 1996 to curb the increasingly low female-to-male ratio and put an end to sex-selective abortions:

An Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and, for matters connected there with or incidental thereto.

The Act consists of eight chapters which define:

- Regulations on the establishments that conduct these tests i.e. genetic counseling centres, genetic clinics, genetic laboratories;
- Regulation of the actual pre-natal diagnostic techniques;
- The administrative structures that must be established for the effective implementation of this Act i.e. the Central Supervisory board and the State Appropriate Authority and Advisory Committee;
- The prerequisites to be fulfilled before conducting these tests;
- Procedure for registration of the establishments, grounds for cancellation or suspension of registration;
- Offences and Penalties; and
- Miscellaneous items including the maintenance of records and power to search and seize records.

The Act prohibits and penalizes the use of any form of technology to determine and disclose the sex of a fetus. The Act specifically prohibits any person, such as a husband or family member, from pressuring the woman to seek or undergo any pre-natal diagnostic testing for the purposes of determining the sex of the fetus. It also prohibits and punishes any advertisements relating to pre-natal sex determination. The Act allows for the use of pre-natal diagnostic techniques for the detection of genetic abnormalities or pregnancy complications but restricts those procedures to specific registered institutions and by qualified personnel who have to abide by clear rules set forth in the Act. The Act allows for penalties of five years in jail and a fine of USD \$200-\$1,000. The Act continues to be amended to address newer technologies for the selection of sex before and after conception.

Acid attacks

An acid attack involves the premeditated throwing of acid on a victim, usually on her face. In addition to causing psychological trauma, acid attacks result in severe pain, permanent disfigurement, subsequent infections, and often blindness in one or both eyes. Perpetrators commit acid attacks for a number of reasons, including revenge for refusal of a marriage proposal or other romantic or sexual advances; land disputes; perceived dishonor; and jealousy. While acid attacks are most prevalent in Bangladesh, Cambodia, India and Pakistan, they have also been reported in Afghanistan and in parts of Africa and Europe. Experts attribute the prevalence of the practice in part to the easy availability of acids. (See: [Statistics, Cambodian Acid Survivors Charity](#); [Good Practices on Harmful Practices Expert Group Report](#), p. 22)

Legislation addressing acid attacks should include the following elements:

- Legislation should define an acid attack as any assault perpetrated through the use of acid. Since acid attacks may be motivated by one of several different reasons, legislation should focus on the acts that constitute the crime, rather than the motive;
- Legislation should penalize anyone who commits an acid attack, specifically including family members among those who may be penalized;
- Legislation should penalize those who aid and abet this harmful practice, and should include family members among those who may be penalized;
- Legislation should make acid attacks a “transferable intent” crime, providing the same penalties regardless of whether the person injured was the intended victim;
- Legislation should provide for penalties of prison time, fines and education;
- Legislation should provide that sentencing guidelines reflect the gravity of the offense;
- Legislation should provide for enhanced penalties if a victim dies as a result of an acid attack. The perpetrator should be prosecuted under the murder statutes of the penal code. The specific law on the acid attack should provide a term of imprisonment and fine which is no less severe than what is provided under the murder statutes of the general penal code with the exception of capital punishment;
- Legislation should require sellers of acids to acquire licenses;
- Legislation should criminalize the unlicensed sale of acids;
- Legislation should require sellers of acids to create and maintain a record of each sale and the identity of each purchaser;
- Legislation should impose a duty upon medical providers to report all cases of bodily harm caused by acid to law enforcement;
- Legislation should mandate that police officers investigate any case reported by a medical provider where bodily harm was caused by acid;

- Legislation should establish and fund public awareness campaigns and training for all sectors about this harmful practice and its consequences;
- Legislation and other practices that perpetuate this harmful practice, such as honour crimes, should be amended or abolished;
- Legislation should allow victims to pursue civil remedies against their attackers. Monetary damages should include the cost of reconstructive surgery;
- Legislation should provide for restitution or reparations separate from any criminal case and provide mechanisms of collection that the victim may easily use to collect the order for restitution from the perpetrator;
- Legislation should also provide that a court may amend or issue an order for restitution at a later time if the true extent of the survivor's loss was not known at the time of the hearing on the restitution request or at the time of disposition of the case; and
- Legislation should provide legal, medical, and other types of rehabilitation services for victims.

(See: [Good Practices on Harmful Practices Expert Group Report](#), pp. 22-23)

Promising Practice – Bangladesh's Acid Crime Prevention Act (2002) and Acid Control Act (2002)

In 2002, the Bangladeshi Government passed two Acts, the Acid Control Act 2002 and the Acid Crime Prevention Act 2002. The Acts address punishment of those involved in the acid attack itself and restrict the import and sale of acid in open markets.

Some important features of the laws include:

- Establishment of a National Acid Control Council Fund;
- Establishment of a Rehabilitation Centre for victims of acid crimes;
- Treatment for victims of acid crimes;
- Provision of Legal Aid for victims of acid crimes;
- Locking up shops to prevent the sale of acid and banning transport engaged in carrying acid;
- Temporary cancellation of acid selling licenses;
- Capital punishment of the acid thrower and penalty of up to Tk 1 lakh (approximately US\$ 1,709);
- Judgment in special tribunals;
- Judgment in the absence of the criminal;
- Power of the Magistrate to take record of witnesses anywhere.

(See: [The UN Secretary-General's database on Violence Against Women](#), Full text: [Acid Control Act 2002 \(Bengali\)](#), [Acid Crime Prevention Act 2002 \(Bengali\)](#))

Promising Practice – Cambodia’s Draft Law on Acid Attacks

In response to the increasing number of acid attacks in Cambodia, the government has drafted a new law regulating the sale and use of chemicals. The draft legislation provides for stiffer penalties for perpetrators, most of whom would receive life sentences. The draft law also establishes a state-run medical center and provides improved medical care and social integration programs for victims.

(See: [CAMBODIA: Strict penalties planned for acid attacks](#), IRIN (28 April 2010))

Promising Practice – Pakistan’s Proposed [Acid Control and Acid Crime Prevention Act, 2010](#)

A bill currently before Pakistan’s Parliament would, if passed, regulate the manufacturing and supply of acids for the first time in that country. The proposed law, the [Acid Control and Acid Crime Prevention Act, 2010](#), broadly defines the crime of “voluntarily causing hurt by dangerous means or substances,” phrases the definition so as to allow for punishment even where someone other than the intended victim is injured, and provides for a maximum penalty of life imprisonment for those convicted of the crime. It includes a civil remedy provision that enables victims to seek monetary damages from perpetrators and provides an enforcement mechanism if a perpetrator fails to pay the ordered damages. The bill also includes a provision regulating the sale of acids and criminalizing the sale of acids by someone who is not licensed to sell them. In addition, the bill contains a provision requiring sellers of acids to keep detailed records on each sale.

The proposed [Acid Control and Acid Crime Prevention Act, 2010](#) provides, in pertinent part:

TO BE INTRODUCED IN THE NATIONAL ASSEMBLY

A BILL to amend various Acts and Codes in relation to protection against acid crimes, and rehabilitation of and compensation for victims of acid crimes.

WHEREAS the Constitution recognizes the fundamental rights of women and children to security of life and liberty, and dignity of person;

AND WHEREAS it is expedient to institutionalize measures which prevent and protect women and children from acid crimes and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:-

1. Short Title and Commencement.-

(1) This Act may be called the Acid Control and Acid Crime Prevention Act, 2010.

(2) It shall come into force at once.

2. Amendment of Section 332, Act XLV of 1860.-

In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the said Code, [section 332 sub-section (1) shall be amended as following:-

“332. Hurt

*(1) Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables, **DISFIGURES, DEFACES** or dismembers **ANY** organ of the body or any part thereof of any person without causing his death, is said to cause hurt.”]*

Pakistan (continued)

3. Insertion of new sections 336A and 336B, Act XLV of 1860.-

In the said Code, after section 336, the following new Sections 336A and 336B shall be inserted, namely:

“336A. Voluntarily causing hurt by dangerous means or substances.

Whoever voluntarily causes hurt by means of fire or any heated substance, or by means of any poison or any corrosive substance or acid, or by means of any explosive or arsenic substance or by means of any substance which is deleterious to the human body to come into contact with, to inhale, to swallow, or to receive into the blood shall be called to have caused hurt by dangerous means or substances.

336B. Punishment for causing hurt by dangerous means or substances.

(1) Whoever, by doing any act with the intention of causing hurt to any person, or with the intention that he is likely to cause hurt to any person, causes hurt by dangerous means or substances to any person, shall be punished with imprisonment for a term which may extend to life, or with fine which may not be less than five hundred thousand rupees, or with both.

(2) Notwithstanding the provision contained in sub-section (1) hereof, the court may, at any stage of the trial on an application by the aggrieved person, direct the accused to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and such relief may include, but is not limited to:-

- (a) loss of earning; and*
- (b) medical expense.*

(3) The accused shall pay monetary relief to the person aggrieved within the period specified in the order made in terms of sub-section (2) and in accordance with the directions of the Court in this regard.

(4) The court may, upon failure on part of the accused to make payment in terms of the order under sub-section (3) direct an employer or debtor, of the accused, to directly pay the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the accused, which amount may be adjusted towards the monetary relief payable by the accused or recover the same as arrears of land revenue.” . . .

5. Amendment of Section 2(1), Act XII of 1919.-

In the Poisons Act, 1919 (Act XII of 1919), hereinafter referred to as the said Act, in section 2,-

(i) for sub-section (1) the following shall be substituted, namely:-

“(1) The Provincial Government may by rules consistent with this Act regulate or prohibit, within the whole or any part of the territories under its administration, except under and in accordance with the conditions of a license granted as provided by this Act and those rules, the manufacture, possession, use, sale and purchase, whether wholesale or retail, of poisons or any specified poison.”

(ii) after sub-section (2), the following sub-sections (3), (4) and (5) shall be added, namely:-

“(3) Except as provided by sub-section (4), a person shall not manufacture, distribute, supply or sell by wholesale or retail any poison unless he is licensed pursuant to the provisions of Section 2A to do so.

Pakistan (continued)

(4) Subject to this Act and the rules,-

(a) a pharmaceutical chemist is authorized to manufacture, have in his possession, and to use, supply or sell at his pharmacy in the ordinary course of his retail business any preparation, admixture or extract containing any poison;

(b) a medical practitioner or veterinary surgeon is authorized to have in his possession and to use, supply or sell in the lawful practice of his profession any poison; and

(c) any dentist is authorized to have in his possession and to use in the lawful practice of his profession any poison.

(d) any other category of person notified by Provincial government in the official gazette shall also be allowed to have possession and use in the lawful practice of his profession any poison

(5) Subject to this Act and the rules,

(a) it shall not be lawful to sell any non-medicinal poison to any person unless that person is either:-

(i) certified in writing in the prescribed manner by a person authorized by the rules to give a certificate for the purposes of this section, or

(ii) known by the seller or by a pharmacist in the employment of the seller where the sale is effected,

(b) the seller of any such poison shall not deliver it until:-

(i) he has made or caused to be made an entry in a book to be kept for this purpose stating in the prescribed form the date of the sale, the name and address of the purchaser and of the person (if any) by whom the certificate required under paragraph (a) above was given, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, and

(ii) the purchaser has signed the entry.”

6. Insertion of new Section 2(A), Act XII of 1919.-

In the said Act, after Section 2, the following new Section shall be inserted, namely:-

“2A. License to sell poisons

(1) Subject to this Act and the rules to be prescribed, a licensing authority may grant a license:-

(a) to make any poison;

(b) to manufacture and distribute or sell by wholesale any poison;

(c) to sell by retail any poison; or

(d) to import across a customs frontier any poison.

in or at any pharmacy or other premises or place of business specified in the license, to any person who satisfies the licensing authority that he is a fit and proper person to be the holder of such a license.

(2) An application for a license under this section shall be made in the prescribed manner to the licensing authority, which may in its discretion grant or refuse the license.

(3) The licensing authority shall not grant any license under this section unless and until it is satisfied that the premises of the applicant are suitable for the purpose in respect of which application is made for the license, and are properly and hygienically equipped for that purpose.

Pakistan (continued)

(4) All existing pharmacies, dealers, vendors, manufacturers, suppliers and other persons who require a license pursuant to sub-section (1), shall apply to the licensing authority for the relevant license not later than six months from the date of framing of rules under this Act.”

7. Substitute of Section 6, Act XII of 1919.-

In the said Act, for Section 6, the following shall be substituted, namely:-

“6. Penalties

(1) Whoever—

(a) commits a breach of any condition contained in Section 2 or of any rule made under Section 2,

(b) imports without a license into Pakistan across a customs frontier defined by the Federal Government any poison the importation of which is for the time being restricted under Section 3, or

(c) breaks any condition of a license granted to him under Section 2A, shall be punishable—

(i) on a first conviction, with imprisonment for a term which may extend to one year or with fine which may extend to one hundred thousand rupees, or with both, and

(ii) on a second and subsequent conviction, with imprisonment for a term which may extend to two years, or with fine which may extend to two hundred thousand rupees, or with both.”

(2) Any poison in respect of which an offence has been committed under this section, together with the vessels, packages, or coverings in which the same is found, shall be liable to confiscation, and notwithstanding anything contained in the Code of Criminal Procedure, 1898 the offences under this Section shall be cognizable, non-bailable and compoundable.”

8. Insertion of Clause 6A, Act XII of 1919.-

In the said Act, after Section 6, the following new Section shall be inserted, namely:-

“6A Cancellation and suspension of licenses.-

Where any person is found to have contravened any of the provisions of this Act, or the rules in respect of any poison and the contravention is of such a nature that the import, export, manufacture or sale of any poison by such person is, in the opinion of the licensing authority, likely to endanger public health, that authority may, after giving such person an opportunity of being heard, cancel the license to make, manufacture, distribute, sell and import poison issued to that person or suspend such license for a specified period.”

BUT NOTE: The proposed Acid Control and Acid Crime Prevention Act, 2010, quoted above allows for a possibility of a fine-only sentence for a person convicted of an acid attack offense. We do not recommend such a provision in acid attack legislation. Penalties must be proportional to the severity of the crime, and in light of this principle, a fine alone does not constitute an appropriate penalty for an acid attack.

Stove burning

The practice of stove burning takes different forms. Sometimes a woman is burned alive through deliberate tampering with a gasoline stove by her in-laws, causing an explosion. Other manifestations of stove burning include incidents where a husband or his family members douse his wife with kerosene oil and set her on fire. Stove burning may be motivated by anger over a wife's failure to fulfill dowry demands or to give birth to a male child, but it is also frequently the culmination of a larger pattern of domestic violence. Stove burning incidents are usually characterized as accidents or suicides by the perpetrators and ignored by the police. Stove burning is prevalent in Pakistan and India. (See: [Good Practices on Harmful Practices Expert Group Report](#), pp. 21-22; See also: [Dowry-Related Violence](#))

Legislation addressing stove burning should include the following elements:

- Legislation should define stove burning as a specific offense of premeditated killing or infliction of bodily harm on a woman through the use of fire, kerosene oil or other stove related matter;
- Legislation should impose criminal penalties on anyone who commits the offense of stove burning, specifically including family members among those who may be penalized;
- Legislation should penalize those who aid and abet this harmful practice, and should include family members among those who may be penalized;
- Legislation should impose a duty upon medical providers to report to law enforcement authorities any case of serious bodily harm or death of a woman caused by fire, kerosene oil, or other stove-related matter;
- Legislation should mandate that police officers investigate any such case reported by a medical provider;
- Legislation should provide for penalties of prison time, fines and education;
- Legislation should provide that sentencing guidelines reflect the gravity of the offense;
- Legislation should provide for enhanced penalties if a victim dies as a result of stove burning. The perpetrator should be prosecuted under the murder statutes of the penal code. The specific law on stove burning should provide a term of imprisonment and fine which is no less severe than what is provided under the murder statutes of the general penal code with the exception of capital punishment;
- Legislation should establish and fund public awareness campaigns and training for all sectors about this harmful practice and its consequences;
- Legislation and other practices that perpetuate this harmful practice, such as honour crimes, should be amended or abolished;
- Legislation should allow survivors of stove burning and the parents, siblings, or children of deceased victims to pursue civil remedies against the perpetrators; and

- Legislation should provide legal, medical, and other types of rehabilitation services for survivors of stove burning.

(See: [Good Practices on Harmful Practices Expert Group Report](#), pp. 21-22)

Promising Practice: Pakistan Criminal Procedure Code, 1898, Section 174-A

The government of Pakistan introduced a new section into its Criminal Procedure Code in 2001, providing that medical or law enforcement personnel who receive a case or report of grievous burns caused by fire, kerosene oil, chemical or other means must notify the nearest magistrate. The medical officer is also required to record the statement of the injured person. This statement is admissible in court under a “dying declaration” exception to the hearsay rules. (See: [Facets of Violence against Women](#), p. 17; [Pakistan: Insufficient Protection of Women](#), Amnesty International)

Breast ironing

- “Breast ironing” refers to the painful practice of massaging or pounding young girls’ breasts with heated objects to suppress or reverse the growth of breasts. The objects used include plantains, wooden pestles and grinding stones heated over coals. The practice has been documented primarily in Cameroon, and is performed by mothers wishing to protect their young daughters from rape, unwanted sexual advances and early sex and pregnancies, all of which they fear would result from the appearance that a girl has reached the age of puberty. (See: [Kouyaté Expert Paper](#), p. 3; [Cameroon Girls Battle “Breast Ironing,”](#) BBC News, 2006)
- In its concluding comments for the country of Cameroon, the CEDAW Committee expressed its concern for the continued practice of breast ironing. The Committee called on the State to increase its efforts to eliminate breast ironing and other harmful practices.

[Conclusions and recommendations of the Committee on the Elimination of All Forms of Discrimination against Women, Cameroon, \(CEDAW/C/CMR/CO/3 \(2009\)\)](#)

29. The Committee urges the State party to enact national legislation to prohibit female genital mutilation, as well as any other harmful practice, such as breast ironing, in all instances, to strengthen its awareness-raising and educational efforts, targeted at both women and men, with the support of civil society, and to eliminate the practices of female genital mutilation and breast ironing and their underlying cultural justifications. It also encourages the State party to devise programmes for alternate sources of income for those who perform female genital mutilation as a means of livelihood

- Legislation addressing breast ironing should include the following elements:

- Legislation should clearly and specifically condemn the practice of breast ironing;
- Legislation should establish and fund education and public awareness programs regarding the consequences of breast ironing;
- Legislation should promote alternative means of preventing early pregnancies through school sex education courses and community outreach education;
- Legislation should impose a duty upon medical providers and teachers to report any case of breast ironing to social service providers and child protection agencies;
- Legislation should authorize courts to issue protection orders upon application by a third party individual or organization on behalf of the child. This protection order should include an ex parte protection order for girls at risk of breast ironing or in the process of breast ironing;
- Legislation should also provide for the protection of younger sisters of known victims, as these sisters are often at risk of being subjected to breast ironing. Drafters should require that the state child protection agency initiate an investigation to determine whether younger siblings of a known victim are at risk of becoming victims, and apply for a protection order if necessary;
- Violation of protection orders should be criminalized;
- Legislation should provide services for victims such as legal, medical, and other types of rehabilitation services; and
- Legislation and other practices that perpetuate this harmful practice, such as sexual assault and harassment, should be amended or abolished.

See also sub-sections on relevant harmful practices addressed in this module:

- Drafting Legislation on [Forced and Child Marriage](#)
- Drafting Legislation on [Female Genital Mutilation](#)
- Drafting Legislation on [Honour Crimes](#)
- Drafting Legislation on [Maltreatment of Widows](#)
- Drafting Legislation on [Dowry-Related Violence](#)

Resources on drafting legislation on harmful practices

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- Basu, Asmita, *Harmful Practices Against Women in India: An Examination of Selected Legislative Responses*, 2009. available in [English](#).
- Bokhari, Shahnaz, *Good Practices in Legislation to Address Harmful Practices Against Women in Pakistan*, 2009. available in [English](#)
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- Council of Europe Parliamentary Assembly, *Resolution 1327 (2003) on So-called "honour crimes"*, 4 April 2003 (16th Sitting). available in [English](#)
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- The Advocates for Human Rights, *Creating a Health Care Response*, Stop Violence Against Women, February 2006. available in [English](#).
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- The Advocates for Human Rights, *Documentation and Reporting*, Stop Violence Against Women, February 2006. available in [English](#).
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- The Advocates for Human Rights, [StopVAW](#) (Stop Violence Against Women); available in [English](#).
- United Kingdom Foreign and Commonwealth Office, *Multi-agency Practice Guidelines: Handling Cases of Forced Marriage*, June 2009. available in [English](#).
- United Nations Department of Economic and Social Affairs Division for the Advancement of Women, *Handbook for Legislation on Violence Against Women*, 2009. available in [English](#).
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Forced and Child Marriage

Throughout this knowledge module, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a viable option. The intention is to set forth examples of initiatives that are already in operation with a view to considering their application.

Overview

Definitions and forms of forced and child marriage

Civil laws

Criminal laws

Victims' rights and responding to victims' needs

Child protection provisions

Roles and responsibilities

Overview

Core elements of legislation on forced and child marriage

The following elements should be established as the core elements of any law on forced and child marriage:

- The free and full consent of both parties;
- A minimum age for marriage of 18 years of age for both parties;
- Recognition of and prohibition against the various forms of forced marriage and related harmful practices, including: child marriage, situations of sexual slavery and forced labor, bride kidnapping, trafficking of women and girls, wife inheritance, marriage as settlement or payment, international marriage brokering, and polygamy;
- A system for the registration of all marriages, births and deaths;
- Granting the same legal status to parties in customary and/or religious marriages as those in civil marriages;
- Criminal penalties for violation of the law;
- Civil remedies for victims;
- The legal consequences of a forced or child marriage (automatic annulment or right to divorce);
- Public education campaigns about human rights, women's rights and laws on forced and child marriage aimed at raising awareness in both urban and rural areas; and
- Trainings for all relevant agencies; the legal sector, including judges, prosecutors, law enforcement; advocates; social services; education, and; third-sector support agencies regarding human rights standards on forced and child marriage.

Sources of international law

United Nations:

A number of international instruments guarantee equality for women and prohibit discrimination.

- The [Convention on the Elimination of All Forms of Discrimination against Women](#) (hereinafter CEDAW) requires states to grant women equality before the law, including equal legal capacity and ability to exercise that capacity in civil matters (Art. 15).
- The [International Covenant on Civil and Political Rights](#) (Article 26) requires states to provide legal protection for women's rights on an equal basis with men and to guarantee the effective protection of women against discrimination through competent national courts (Art. 2(c)).
- With regard to marriage, Article 16 of the [Convention on the Elimination of All Forms of Discrimination against Women](#) requires States Parties to specify a minimum age for marriage, take all appropriate measures to eliminate discrimination against women in all related matters and to ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Importantly, the betrothal and the marriage of a child have no legal effect.

- The [U.N. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage](#) states that consent is to be expressed in person by the parties and in the presence of an authority competent to formalize the marriage and of witnesses (Art. 1(1)). With regard to international marriage brokering, CEDAW notes in its [General Recommendation 21](#) that “women's poverty forces them to marry foreign nationals for financial security” and stresses that the law must protect a woman’s right to choose when, if and who she marries (¶ 16).

International law requires the registration of marriages and births. The [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#) requires a competent authority to register all marriages in official records (Art. 3); see also [African Women’s Protocol](#), Art. 6(d). Also, the [Convention on the Rights of the Child](#) states that all children should be registered upon birth (Art. 7(1)); see also Art. 6(2), [African Charter on the Rights and Welfare of the Child](#).

- The [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#) prohibits “[a]ny institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person.” The element unique to slavery but not necessarily found in a forced marriage is the right of ownership that is exercised over the victim. [Slavery Convention of 1926](#), Art. 1(1)). International law also addresses slavery practices involving children. The [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#) prohibits delivering a child or young person under the age of 18 years by either or both of his parents or guardian to another person, whether for compensation or not, for purposes of exploitation or for the child’s labor (Article 1(d)). The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography prohibits the sale of children, where “a child is transferred by any person or group of persons to another for remuneration or any other consideration” (Art. 2(a)) for purposes of forced labor, sexual exploitation or child prostitution (Art. 3(a)(i)(a), (c), 3(b)).
- Under [CEDAW](#), states are obligated to take appropriate measures to modify social and cultural patterns that discriminate against women (Art. 5(a)). The Committee on the Elimination of All Forms of Discrimination against Women [General Recommendation 19](#) states that “[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and

mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” CEDAW has also expressed concern over practices that uphold culture over eliminating discrimination. In its [1999 Concluding Observations on Nepal’s periodic report](#), CEDAW expressed its concern over the Supreme Court prioritizing the preservation of culture and tradition when interpreting discriminatory laws. Also, the Human Rights Committee has drawn attention to minority rights that infringe upon the rights of women. In [General Comment 28](#), it stated that those “rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights, including the right to equal protection of the law” (¶ 32).

Africa:

- The [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) dictates that States Parties take appropriate measures to:
 - ELIMINATE all forms of discrimination against women (Article 2);
 - ENACT and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women (Article 2(1)(b));
 - PROHIBIT “all forms of harmful practices which negatively affect the human rights of women” and take all necessary legal and other measures to protect women from harmful practices and all other forms violence, abuse and intolerance (Article 5);
 - GUARANTEE women and men equal rights in marriage, require the free and full consent of both parties in marriage, establish a minimum age of 18 for women to marry, and encourage monogamy as the preferred form of marriage (Article 6);
 - ENSURE that women and men enjoy the same rights in case of separation, divorce or annulment of marriage (Article 7).

Article 20 of the protocol requires States Parties to take appropriate legal measures to ensure that widows enjoy all human rights, which includes ensuring that:

- WIDOWS are not subjected to inhuman, humiliating or degrading treatment;
- A WIDOW automatically becomes the guardian and custodian of her children after the death of her husband, unless this is not in the children’s best interests; and
- A WIDOW has the right to remarry and to marry the person of her choice.

- The [African Charter on the Rights and Welfare of the Child](#) states that States Parties shall take “all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child,” including customs and practices that discriminate based on sex. The charter prohibits the marriage and betrothal of children and calls for States Parties to adopt laws setting the minimum age for marriage at 18 years and requiring registration of all marriages in an official registry (Article 21). Furthermore, every child is entitled to enjoy parental care and protection and has the right to reside with his or her parents. [Protocol to the African Charter on the Rights and Welfare of the Child](#), Art. 19(1); [Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa](#), Art. 20(b). Laws should bar separation of a child from his or her parent against the child’s will save in circumstances where a judicial authority has determined such separation is in the child’s best interests. [Protocol to the African Charter on the Rights and Welfare of the Child](#), Art. 19(1); [Convention on the Rights of the Child](#), Art. 9(1).

Europe:

- The [Charter of Fundamental Rights of the European Union](#) specifically enshrines the right to non-discrimination on the basis of sex, and Article 23 obligates states to ensure equality between men and women in all areas. The [EU guidelines on violence against women and girls and combating all forms of discrimination against them](#) state that violence against women and girls includes forced marriage and child marriage whether perpetrated or condoned by the state or not (Annex, p. 14).
- The Council of Europe’s [Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11](#) prohibits discrimination in the enjoyment of all rights and freedoms set forth in the treaty (Article 14). The Council of Europe’s [Social Charter](#) calls on States Parties to take all appropriate measures, including through institutions and services, to protect the right of children and young persons to social and economic protection (Article 17). The [European Parliamentary Assembly Resolution 1468 “Forced Marriages and Child Marriages”](#) (2005) addresses situations where there are doubts about free and full consent by authorizing a registrar to interview both parties prior to the marriage. [Recommendation 1723 “Forced Marriages and Child Marriages”](#) (2005) recommends that the Committee of Ministers direct the appropriate committee to investigate the issue of forced marriages and child marriages and develop a strategy for Member States to take action on the matter.

Americas:

- The Organization of American States has promulgated the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#) (“Convention of Belem do Para”), which prohibits violence against women in the public and private spheres. It requires States Parties to take a

number of measures, including legal measures and progressively specific measures to modify legal or customary practices which perpetuate violence against women or are based on inferiority, superiority or stereotyped roles of either of the sexes that condone or exacerbate violence against women (Articles 7(e) and 8(b)).

Drafting the legislative preamble

The legislative preamble sets the stage for the entire piece of legislation. The following elements are important to a strong and inclusive legislative preamble:

- IT acknowledges that the root cause of violence against women is the subordinate status of women in society. (See: DEVAW, General Recommendation 19, [UN Secretary-General's study on violence against women](#), and [Stop VAW](#), The Advocates for Human Rights: [Other Causes and Complicating Factors](#) and [The International Legal Framework](#))
- IT defines discrimination against women. [United Nations Handbook for legislation against women](#) (hereinafter UN Handbook, 3.1.1)
- IT protects all women and girls. [UN Handbook](#), 3.1.3.
- IT excludes customary or religious justifications for forced and child marriage and polygamy. [UN Handbook](#), 3.1.5; the [Report of the Special Rapporteur on violence against women, its causes and consequences, a framework for model legislation on domestic violence](#), 1996, E/CN.4/1996/53/Add.2; [CEDAW](#), Art. 2(f), 5(a).
- IT states that the main principles of the legislation are to promote safety for the complainant/survivor and accountability for the perpetrator. (See: Stop VAW, The Advocates for Human Rights: [Drafting Domestic Violence Laws](#) and [United Nations Model Legislation](#))
- IT states that everyone has the right to personal liberty and security ([ICCPR](#), Art. 9(1))
- IT states that everyone is entitled to equal rights and responsibilities as to marriage, during marriage and at its dissolution. (See: Convention of [Civil and Political Rights](#) and [CEDAW](#))
- IT states that no marriage is to be entered into without the free and full consent of both parties [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#), Art. 1(1)
- IT recognizes that every child has the right to a “standard of living adequate for the child's physical, mental, spiritual, moral and social development” ([Convention on the Rights of the Child](#), Art. 27(1))

Definitions and forms of forced and child marriage

Definition of forced and child marriage

- Drafters should carefully consider the specific context in which forced marriage occurs in their country. Forced marriage can assume various forms and may occur in situations involving slavery; mail order marriages; human trafficking; arranged, traditional and customary marriages; expedient marriage; marriages as dispute settlement; fictitious marriages; trokosi (the practice of giving young virgin girls to priests to serve as sexual slaves as payment for services or as atonement), and; bride kidnapping or marriage to acquire citizenship. Also, the [forced marriage of people with disabilities](#), where the victim may lack capacity to give full and informed consent, or she may lack capacity to consent to sex within a marriage, constitutes another form. Drafters should be aware that physical force is not a necessary element of forced marriage. Some situations may constitute forced marriages by virtue of duress, which may be physical, psychological, sexual or emotional in nature, or by virtue of more subtle factors at play, such as fear, intimidation, social and familial expectations, or economic forces.
- Drafters should ensure that a definition of forced marriage includes, at a minimum, the absence of free and full consent of one or both parties. Laws and human rights documents generally describe forced marriage as a union that lacks the free and full consent of both parties.
- For example, the [European Parliamentary Assembly Resolution 1468 “Forced Marriages and Child Marriages”](#) (2005) defines forced marriage as the “union of two persons at least one of whom has not given their full and free consent to the marriage” (¶ 4). (See: [UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage](#) (Art. 1(1)) and [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) (Art. 6(a)), which both state that marriage may only take place upon the “free and full consent” of both intending parties.
- Drafters should define early and therefore forced marriage as that of a child under the age of 18 years. The [Convention on the Rights of the Child](#) states that a child is defined as anyone under the age of 18 years of age, unless the law states that majority is reached at an earlier age (Art. 1). As a child under the age of 18 is not capable of giving her valid consent to enter into marriage, child marriages are considered to be forced marriages. (See: [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#); see: [European Parliamentary Assembly Resolution 1468 “Forced Marriages and Child Marriages.”](#) 2005, which defines child marriage as “the union of two persons at least one of whom is under 18 years of age” (¶ 7) and the [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#), which sets the minimum age of marriage for women at 18 years (Art. 6(b)). Additionally, laws should state that the betrothal and marriage of a child shall have no legal effect.

- Depending on local law, marriages under the age of majority have the potential to constitute a form of child abuse. The response to forced marriage where the person to be protected is under 18 years of age should be dealt with as a child protection issue. (See: [Section on Child Protection Provisions](#))

Promising practice: [Ghana's Children's Act of 1998](#) (Act 560) establishes the minimum age for marriage at 18 years (Art. 14). Moreover, the law anticipates the possibility of parents or guardians promising a child for future marriage. It states that no one can force a child, defined as someone under the age of 18 years, to be married, betrothed or the subject of dowry (Art. 1, 14). Punishment ranges from 5 million Cedis, one year imprisonment or both (Art. 15). Also, [Ghana's Criminal Code](#) makes it a misdemeanour to cause a person, using duress, to marry against his or her will (Article 109).

Defining and establishing consent

- When constructing the definition of forced marriage, drafters should consider how to define and establish consent in forced marriages. Drafters may look to other states' laws, which have used terms, such as "free," "full," "mutual," "voluntary," and "informed," to describe consent. Laws should include the following elements in a definition of consent: free, informed, and not extracted under pressure or vitiated by external factors, such as constraint. Drafters may wish to include legal commentary explaining that consent is absent when family members use "coercive methods such as pressure of various kinds, emotional blackmail, physical duress, violence, abduction, confinement and confiscation of official papers" in an arranged marriage, thus denying one or both parties the option of refusal. (See: [Explanatory memorandum](#), Council of Europe Parliamentary Assembly, Section II.A.1.b.16-17, 2005)

Example: International jurisprudence provides some guidance on elements that do not constitute consent. In the context of the Sierra Leone armed conflict, the Trial Chamber of the Special Court for Sierra Leone found that any "benefits" victims of forced marriage received, such as food, clothing, and protection against rape by other men, did not constitute consent to the forced marriage. (See: Prosecutor vs. Brima, Kamara and Kanu (AFRC Case), [AFRC Trial Judgment](#), ¶¶ 1081, 1092)

Promising practice: The UK defines forced marriage as one without the consent of both spouses that involves duress, whether physical, psychological, sexual or emotional in nature. Caselaw from England and Wales recognizes that emotional duress, external factors outside the person's control, and threat of immediate danger can constitute duress. UK caselaw has outlined both objective and subjective tests for duress. The court in *Buckland v. Buckland* (1965) used an objective test for duress. The Probate Court found that there was duress, because the victim felt compelled to marry out of a reasonable fear arising from "external circumstances for which he was in no way responsible." In *Szechter v. Szechter* (1970), the Probate Court applied *Buckland* and *H. v. H.* (1954) and found that the party's will must have been overcome by "a genuine and reasonably held fear caused by threat of immediate danger (for which the party is not himself responsible) to life, limb or liberty, so that the constraint destroys the reality of consent to ordinary wedlock." The Court of Appeal in *Hirani v. Hirani* (1982) used a subjective test for duress. In this case, the court used the test of whether the threats, pressure or other form of duress were sufficient to "destroy the reality of consent and overbears the will of the individual." Threats of violence or deprivation of liberty were not required to constitute duress.

- In addition to defining consent, laws should provide the mechanisms necessary to determine valid consent. Laws should require the physical presence of both parties and witnesses as a means of establishing consent. Drafters should require consent to be expressed in person by the parties and in the presence of an authority competent to formalize the marriage and in the presence of witnesses. To combat nonconsensual marriages, drafters should not confer legal recognition on marriages by proxy, but instead require the presence of both parties plus witnesses at the legal proceeding for the marriage.

Promising Practice: Croatia has eliminated marriage by proxy; thus, a family member may no longer represent a party in a marriage ceremony under that Marriage and Family Relationships Act (2003). See: Edwige Rude-Antoine, [Forced marriages in Council of Europe member states](#), Council of Europe, 2005, pp. 74-75.

- Drafters should consider providing additional mechanisms to ensure that consent is freely and fully given. Laws should authorize a registrar to interview both parties, separately and along, prior to the marriage where there are doubts about free and full consent. For example, Norway provides a mechanism allowing an official to interview both parties to ensure they have consented to the marriage.
- Drafters should also consider that, in establishing a process to safeguard and check that both parties are consenting to the marriage, there is appropriate support available for those who are being forced into marriage and require protection and support after disclosing. See: Section on Victims' Rights.

- Drafters should make proof of age always compulsory for marriage. Laws should avoid language that gives the registrar discretion whether to require proof that both parties are at least 18 years of age. See: (Art. 31(2)-(3), [Ireland Family Law Act](#) (1995), where the registrar has the option to request evidence “if he or she so thinks fit” and refuse the application for non-compliance or where the minimum age requirement is not met.
- In areas where there is no established birth registration or certification system, drafters may wish to provide for alternative means of age validation, such as witness affidavits or school, baptismal and medical records. It is important for laws to note, however, that any alternative source of information be an official one, and approaches should not in any circumstances be made to the family.

Establishing a minimum age for marriage

- Drafters of laws on forced marriage should specify the minimum age of 18 years for marriage. (See: [CEDAW](#), Article 16(2); [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#), Art.2) Establishing 18 years as the minimum age for marriage is supported by both international and regional law. (See: Article 1 of the [Convention on the Rights of the Child](#) (stating a child is defined as anyone under the age of 18 years of age, unless the law states that majority is reached at an earlier age) and Article 1(1) of the [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#) (requiring the free and full consent of both parties)) The [African Charter on the Rights and Welfare of the Child](#) adopts a strong stance against harmful traditional and social practices that affect the “welfare, dignity, normal growth and development” of the child, including those practices that discriminate based on sex. The charter prohibits child marriage and the betrothal of children, calling for states to take effective action, including legislation, to specify the minimum age for marriage as 18 years and to mandate the registration of all marriages in an official registry (Art.21). [Council of Europe Parliamentary Assembly Resolution 1468](#) defines child marriage as the union of two persons, one of whom is under 18 years of age (¶ 7).
- Since girls are frequently the underage party in forced marriages, drafters should promote equality in marriage by ensuring that the minimum age is the same for men and women.
- Drafters should establish 18 years as the minimum age for marriage without exception. Some states allow an underage minor to marry with their parent or guardian’s permission or upon court authorization. For example, Poland allows a court to authorize a girl as young as 16 years of age to marry even in the absence of parental permission. (See: [Family Life, Poland](#), Legislationline) [Some states in the U.S.](#) have similar laws. [Minnesota Statute 517.02](#) allows a 16-year-old to marry with the permission of the custodial parents, guardian or court, “after a careful inquiry into the facts and the surrounding circumstances.” In [Mississippi](#),

the minimum age for marriage is 17 for males and 15 for females, which can be waived with parental consent. In [New Hampshire](#), the minimum age is 14 for males and 13 for females, with parental and judicial consent. Croatian courts may authorize a marriage after consultation with the underage person and their parents and if it deems the underage party sufficiently physically mature to handle the responsibilities and rights in marriage. (See [Forced Marriages in Council of Europe member states](#) (2005), p.38)

- Laws should ensure that the minimum age corresponds with an objective standard of maturity, i.e. the age of 18, rather than subjective perceptions of the party's maturity. Misperceptions that equate sexual maturity with readiness for marriage do not take into account ongoing development. The Committee on the Rights of the Child has found that physical development does not connote maturity, particularly when social and mental development is still in progress. (See: [OHCHR Fact Sheet No.23](#), ¶ D) During adolescence, teenagers undergo an important developmental stage, whereby learning to “marshal their thoughts, measure their impulses and think abstractly may lay important neural foundations that will last throughout their lifetime.” Trauma and abuse at this stage, however, can negatively impact an adolescent's brain functioning and ability to learn, thus hindering her future opportunities. (See: [Adolescence: A Time That Matters](#), UNICEF, 2002, p.7)
- Laws should not allow exceptions for the minimum age for marriage. Although some governments allow a lower minimum marrying age with third-party consent, research indicates that girls who marry younger face harmful consequences of early marriage. Girls who marry early are at greater risk of domestic violence, are more inclined to believe wife beating is justifiable, are more likely to soon bear additional and greater numbers of children, are less able to negotiate safe sex, face a greater risk for contracting HIV/AIDS and STIs, are at increased risk for obstetric fistula, are denied their rights and recognition as a person, and are less likely to obtain education. (See [Is Teen Marriage a Solution](#), Center for Law and Social Policy, p.8; [Early Marriage: A Harmful Traditional Practice](#), UNICEF, 2005, p.27; and [A Time That Matters](#), UNICEF, 2002, p.27-28) Furthermore, the risks of maternal and infant mortality are greater when girls give birth as adolescents.

Development of a National Action Plan on forced marriages

Drafters should develop a national plan of action to combat forced and child marriage. Guidance can be found in the [Beijing Platform for Action](#), which calls upon states to promulgate national plans of action. The Beijing Platform for Action recommends involving broad participation in the plan by national bodies that work on the advancement of women, the private sector, and other relevant institutions, including “legislative bodies, academic and research institutions, professional associations, trade unions, cooperatives, local community groups, non-governmental organizations, including women’s organizations and feminist groups, the media, religious groups, youth organizations and cultural groups, as well as financial and non-profit organizations” (¶¶ 294-95). The platform also emphasizes the importance of involving actors at the highest political levels, ensuring appropriate staffing and protocols are in place within ministries, having stakeholders review their goals, programs, and procedures within the framework of the plan, and engaging the media and public education to promote awareness of the plan (¶ 296). The plan should also address the roles and responsibilities of actors charged with implementing the plan.

Promising Practices:

Norway has promulgated an [Action Plan on Forced Marriages](#) (2008-2011). The plan sets forth a six-point strategy to combat forced marriages, including: legislation against forced marriage and its enforcement; prevention; expertise and cooperation; ensuring that help is effective and available; intensifying international efforts and cooperation, and; strengthening knowledge and research. The action plan also addresses the national machinery responsible for implementation, which includes primary and secondary school systems, the Directorate of Education, the municipal and school health services, mental health care, social services, child welfare, crisis centers, family counseling services, police, prosecutors, immigrant-focused organizations, agencies working against forced marriage, municipal refugee services, the integration and diversity body, asylum seeker reception centers, Directorate of Immigration, Immigration Appeals Board, the Foreign Service, religious communities, the state housing agency, centers on violence, traumatic stress and suicide prevention, and the minority health unit.

The UK Forced Marriage Unit has promulgated a [Forced Marriage Unit Action Plan](#) for 2009-2010, which is now seated under the broader Violence Against Women Action Plan 2010-2011. The plan seeks to strengthen safeguards to ensure that all victims of forced marriage receive effective and coordinated support from relevant national agencies and aims to eradicate forced marriage by working with communities, victims and governments to overcome the longstanding practices of acceptance or denial. It involves three campaigns that focus on prevention, protection and provision: 1) Practitioner Response; 2) Community Response; and 3) International Response.

Defining other forms of forced marriage: human trafficking

Drafters should ensure that trafficking laws prohibit and punish forced and child marriages. Drafters may wish to use the international definition of trafficking: “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” as a basis for legislation. Exploitation should be defined to include the “exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” International law renders consent irrelevant where any of the means listed is used to achieve the forms of exploitation specified. (See: [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](#))

Should drafters use this definition as a basis for trafficking laws, they should consider whether to explicitly list forced and child marriage as a form of exploitation. On the one hand, listing specific forms of violence or exploitation may result in excluding some form of exploitation that is not on the list from sanctions. On the other hand, in states where forced marriage is not a specific offence or is under-prosecuted, providing added protection through a trafficking law may be an appropriate strategy.

Should drafters choose to address forced marriage in trafficking laws, they should provide an expansive definition that reflects the realities of trafficking in their country. Instances of forced and child marriage vary, and may involve a single perpetrator trafficking a victim domestically or multiple perpetrators trafficking victims internationally. To fully address the phenomenon, drafters should provide an expansive definition to acknowledge and encompass both international and domestic trafficking. The definition should not require the involvement of multiple offenders but recognize that a single offender is capable of perpetrating an act of trafficking for purposes of forced marriage. (See: [Sex Trafficking of Women and Girls](#))

Promising Practice: [Macedonia’s Criminal Code](#) (2004) provides a wide definition of trafficking and explicitly includes forced marriage as a form of exploitation in trafficking. Any person who, “by force, serious threat, misleads or use of other forms of coercion, kidnapping, deceit and abuse of his/her own position or a position of pregnancy, weakness, physical or mental incapability of another person, or by giving or receiving money or other benefits in order to obtain consent of a person that has control over another person, recruits, transports, transfers, buys, sells, harbours or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, *forced marriages*, forced fertilization, unlawful adoption, or a similar relationship or illicit transplantation of human body parts, shall be punished with imprisonment of at least four years” (emphasis added) (Article 418(a)(1)).

Defining other forms of forced marriage: international marriage brokering

- Drafters should consider whether to adopt a specific law on international marriage brokering. At a minimum, laws must protect a woman's right to choose when, if and who she marries. In the absence of a specific law governing international marriage brokering, states may need to rely on a complex web of immigration, contract, family, criminal and private international laws. Drafters should realize these laws may overlook the specific needs and vulnerabilities of a mail order bride. For example, visa regulations that treat foreign fiancées as undocumented immigrants if they fail to marry within a certain timeframe place the fiancée in a vulnerable position by making her dependent on her fiancé.
- Should drafters decide to adopt a specific law to address international marriage brokering, laws must reflect the dynamics of international marriages that create inequities between the woman and man. In a mail order marriage, or an international marriage facilitated through a broker, a woman may have consented to marry a person from another country. Yet, these women may lack critical background information about their foreign fiancés and therefore not be fully informed when they give their consent. Once inside the host country, these women are prime targets for domestic abuse due to their isolation, their unfamiliarity with the host country's laws and agencies, potential language barriers, fear of deportation or retaliation from their spouse. They may even become trapped in a situation of slavery, domestic servitude or debt bondage. ([Marriage Broker Regulation Act of 2005](#))
- When developing a law on international marriage brokering, drafters should evaluate whether to regulate or prohibit the industry. Should drafters choose to regulate the industry, laws should establish an accreditation system for agencies that facilitate international marriage brokering. Laws should establish minimum standards to regulate the industry, which may include charging reasonable fees, ensuring that online agency site owners are clearly identifiable and requiring site users to identify themselves, monitoring marriages and providing an emergency contact number. Agencies should be compelled to conduct background checks on the male to verify he does not have a criminal record. (See: [Domestic slavery: servitude, au pairs and mail-order brides](#)), Committee on Equal Opportunities for Women and Men, Council of Europe Parliamentary Assembly, 2004) Drafters should incorporate an additional measure that requires agencies to provide the histories of prospective bridegrooms to the foreign woman. (See also: [Sex Trafficking of Women and Girls](#))

Promising Practices:

United States: As a destination country for mail order brides, the U.S. has issued regulations on international marriage brokering. The [U.S. International Marriage Broker Regulation Act of 2005](#), which is part of the Violence against Women and Department of Justice Reauthorization Act of 2005, requires international marriage brokers to provide the marital and criminal histories of men who use their services to foreign clients, and requires the U.S. Department of State to provide information about U.S. laws on violence against women to fiancée visa applicants in their own language. The law bars the release of information on the foreign client until she has reviewed the information and given her consent. Finally, the law prohibits simultaneous applications for multiple foreign fiancée visas, since men may simply marry whoever is approved first.

The Philippines: As a country of origin for mail order brides, the Philippines has banned the international marriage brokering industry. [Philippines International Marriage Broker Regulation Act](#) prohibits any person or entity from directly or indirectly: starting or conducting a business for the purpose of connecting Filipino women to foreign citizens for marriages; distributing information to promote these activities; recruiting a Filipino woman to join a group that seeks to connect women to foreign nationals for marriage; and using the postal service to connect Filipino women to foreign citizens for marriages. It also prohibits any media, printing or advertising agency manager from knowingly allowing or consenting to the above activities (Section 2). Penalties include imprisonment between six years and one day to a maximum of eight years, and a fine between 8,000 pesos and 20,000 pesos. If the perpetrator is a foreign national, he is subject to immediate deportation and permanent bar from re-entry into the Philippines after completing his punishment.

Defining other forms of forced marriage: slavery, sexual slavery, forced labor and debt bondage

- Drafters should prohibit slavery practices that allow the transfer of a woman for money or other consideration where the end result is a legalized or informal marriage. These laws should prohibit: 1) any right of ownership to be exercised over the victim; 2) the transfer of a woman or girl for money or other consideration or as inheritance or for purposes of a marriage, whether formal or informal, and; 3) the exploitation of the victim through slavery, sexual slavery, forced labor or debt bondage.
- Drafters should ensure that laws address both de jure (by law) and de facto (by fact) marriages that arise from or lead to situations of slavery, sexual slavery, forced labor and debt bondage for women and girls. In these cases, there may be either an actual marriage or an informal marriage that has arisen from the circumstances. Laws should take into account that slavery, sexual slavery, forced labor or debt bondage may posture as a de jure marriage. For example, a trafficking victim or mail order bride may have entered a formal marriage that

later transforms into one of these exploitative situations. In the case of trokosi, where no formal ceremony may have taken place, a young female is given to a priest for forced labor or sexual exploitation to atone for the crimes of a relative or ancestor, to ward off a curse, or as payment for the priest's services.

- Drafters should carefully review laws governing child custody, property, and immigration issues as they pertain to parties in both legal marriages and in informal marriages. Laws should address specific victim needs with regard to immigration, as well as family issues governing divorce, child custody and property issues that stem from a de jure marriage.
- Laws must also guarantee these rights to women and girls who are trapped in a situation of slavery in a non-formal marriage that lacks legal recognition. In this case, a different type of vulnerability arises because victims lack the legal status granted by a formal marriage to assert their rights. Because the victim may lack personal civil status in her marriage, drafters should ensure she is guaranteed equal protection of the law.
- In particular, drafters should eliminate laws that award children or property to the male or his family in non-formal unions.
- Where there is domestic abuse, drafters should construct laws that require judges to:
 - consider domestic violence in making a custody award,
 - grant visitation rights to the perpetrator only if adequate measures to protect the child and mother's safety are made,
 - create a presumption against awarding custody to the abusive parent, or
 - prohibit an award of joint custody to an abusive parent.

(See, [Child Custody Issues](#), Stop VAW, The Advocates for Human Rights)

See also: section on [International Marriage Brokering under Sex Trafficking of Women and Girls](#).

- Drafters should consider options for domestic prosecution as established by international caselaw. Drafters in states with laws on crimes against humanity may look to international jurisprudence on forced marriage. The Special Court for Sierra Leone prosecuted forced marriage as an “other inhumane act” under crimes against humanity. In the context of the Sierra Leonean armed conflict, the court focused on the elements of force and coercion, the presence of a conjugal relationship, and harm to the victim. During the conflict, combatants abducted girls and women to act as “bush wives,” where they were subjected to rape, sexual slavery, and forced labor tasks, such as cooking, cleaning and portering. In these cases, the forced marriage involved conditions of sexual slavery and forced labor. The court, however, distinguished the crimes of forced marriage and sexual slavery, defining forced marriage as the “situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.” (See: [Prosecutor vs. Brima, Kamara and Kanu \(AFRC Case\)](#), Special Court for Sierra Leone, 2008, ¶ 190)

Defining other forms of forced marriage: wife inheritance, levirate and sororate marriages

- Drafters should also ensure that laws prohibit discrimination against women and girls and condemn discriminatory practices. Laws should prohibit and punish all forms of wife inheritance, levirate and sororate marriage. Levirate marriage is the forced marriage of a widow to the brother of her deceased husband; sororate marriage is the forced marriage of the sister of a deceased or infertile wife to marry or have sex with her brother-in-law, the widower/husband. Specifically, laws should prohibit any institution or practice where a widow may be inherited by another person or a widow or sister is forced to marry her brother-in-law or other relative. Also, laws should punish those who aid or authorize these types of forced marriages. Laws should guarantee women equality before the law with men, particularly equal legal capacity and ability to exercise that capacity in civil matters. Laws should guarantee women equal rights with men in regard to marriage, including the same right to enter into marriage, the same right to freely choose a spouse and equal rights at the dissolution of marriage. (See: [Maltreatment of widows](#); [Sexual Assault](#); [Addressing customary laws and practices that conflict with formal laws](#))
- Drafters should address discrimination against women with regard to their children and eliminate laws and practices that remove the child from a widow's custody without a judicial determination on the child's best interests. Drafters should guarantee to women and men the same rights and responsibilities with regard to matters relating to their children, including guardianship, wardship, trusteeship and adoption. Laws should ensure that widows automatically become the guardian of their children upon the death of their husband, unless the child's best interests dictate otherwise. Specifically, laws should bar separation of a child from his or her parent save in circumstances where a judicial authority has determined such separation is in the child's best interests.

(See: [Maltreatment of Widows](#))

Bride kidnapping

- Drafters should consider whether to create a new offence of bride kidnapping, where they must ensure adequate resources for training, outreach, prosecutions, and victim support, as well as penalties reflective of the seriousness of the crime. Bride kidnapping involves taking a female without her consent for the purpose of forcing her to marry one of her captors. Perpetrators may use psychological coercion or physical force, including rape, to force the woman or girl into marriage. As with other forms of forced marriage, the key elements are: the taking of a woman or girl; an absence of her consent; for the purpose of marriage. A crime of bride kidnapping should not require that a marriage rite take place, and offenders should still be held accountable even if the victim escapes captivity prior to the marriage.

- Drafters should ensure that related offences, such as assault, rape, marital rape, abduction, kidnapping, false imprisonment, and trafficking, are criminalized and enforced against perpetrators of bride kidnapping. Alternatively, drafters may wish to consider using existing offences to prosecute forced and child marriage, but include bride kidnapping as an aggravating factor for sentencing purposes.
- Drafters should be aware of traditional practices where the bride “agrees” to be kidnapped as part of a wedding, but also ensure that what might appear to be a harmless tradition does not provide a loophole for abuse. (See: [Section on Defining and establishing consent](#))
(See: [Addressing customary laws and practices that conflict with formal laws.](#))
- Most of the criminal laws addressing this problem require kidnapping or abduction. Under Article 23 of the Georgian criminal code, bride abduction qualifies as a “crime against human rights and freedoms” and a perpetrator can receive a sentence of four to eight years in prison or up to twelve years if the act is premeditated by a group. Article 366 of the Bangladesh Criminal Code punishes the abduction of a woman with the intent to compel or knowledge that it is likely she will be compelled to marry against her will.
- Abduction is a requisite element in these cases. Thus, a perpetrator who uses physical or other coercive means, but not abduction, to force a woman into marriage, will escape prosecution under bride kidnapping laws. Criminal laws on related offences, such as assault or rape, may be used to prosecute offenders who commit those crimes. In general, however, focusing on the kidnapping element may exclude other forms of forced marriage from the law’s scope. Bride kidnapping constitutes only one form of forced marriage, where the unique factor is abduction. Adopting a specific bride kidnapping offence is an important measure, but drafters should ensure laws punish all forced marriages where free and full consent is absent.
- Drafters should ensure that punishments for bride kidnapping are, at a minimum, commensurate with those for kidnapping and other related offences. For example, the Kyrgyzstan Criminal Code, Art.155 punishes marriage by abduction by either a fine of 100-200 times the minimum monthly salary or a maximum of five years in prison. In a [2006 report](#), Human Rights Watch made several recommendations on improving legislation and its implementation. It recommended that lawmakers explicitly criminalize marital rape, and improve investigations of accomplices—including offenders who assist in her kidnapping, falsely imprison her, plan the capture, or physically or psychologically coerce the woman throughout, fail to inform police of the kidnapping or otherwise facilitate the offence.

Defining other forms of forced marriage: bounty hunting

Legislation should make it an offense to hire, solicit, aid, or conspire with a bounty hunter or to bounty hunt or attempt to bounty hunt for victims of forced marriage. Drafters should consider establishing a separate offense for bounty hunting or framing bounty hunting within the offenses of kidnapping, abduction, stalking, and false imprisonment. Legislation that recognizes bounty hunting as a form of these offenses in exchange for hire, should ensure the penalty reflects the gravity of the offense.

Defining other forms of forced marriage: forced and child marriage as settlement

- Drafters should prohibit and punish any practices that allow the forced marriage of a woman or girl for purposes of settlement. Also, laws should punish individuals who aid or authorize forced marriage as settlement. (See Addressing Customary Laws and Practices that Conflict with Formal Laws)
- Laws should prohibit: any institution or practice where a woman, without the right to refuse, is promised or given in marriage in return for payment or in-kind consideration to another; practices where a woman's husband, his family or his clan can transfer her to another for value received or otherwise, and; practices that deliver a child or young person under the age of 18 years by either or both of his parents or guardian to another person, whether for compensation or not, for purposes of exploitation or for the child's labor.

Example: Ghana's 1998 Criminal Code included an amendment criminalizing the practice of *trokosi*: "Whoever sends to or receives at any place any person or participates in or is concerned with any ritual or customary activity in respect of any person with the purpose of subjecting that person to any form of ritual or customary servitude or any form of forced labour related to customary ritual shall be guilty of a second degree felony and liable on conviction to imprisonment for a term of not less than three years." This law remains unenforced, because police and families generally fear retribution by the priest. Laws that prohibit harmful practices such as *trokosi* should include public education targeting girls and women, their families, and the priests that aims at dispelling misperceptions and fears about *trokosi*. Laws should also engage traditional laws, structures and leaders to help end this practice and raise public awareness. (See: *Voices of African Women*, Gbedemah. See section on [Defining other forms of forced marriage: slavery, sexual slavery, forced labor and debt bondage](#))

Promising practices:

Pakistani: The Pakistani Criminal Law (Amendment) Act 2004 added a new provision that criminalizes the act of giving females for marriage as part of a compromise in dispute settlement between families or clans.

Drafters should immediately repeal any provisions that allow a rapist to evade culpability or enjoy a reduced or suspended sentence by marrying the victim. (See: Honor Crimes)

Turkey: In 2004, Turkey repealed criminal law provisions that provided for reduction or suspension of sentences for rapists who married their victims. The Turkish Civil Code requires the free and full consent of both parties for a marriage (Article 126). (See: [Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns](#), Women for Women's Human Rights--New Ways, 2005)

Polygamous marriages

- Drafters should take steps to prohibit and eliminate polygamous practices without exception for religious and customary systems that allow polygamy.
- Drafters should consider prefacing laws condemning polygamy with the international legal obligations, as well as policy arguments, requiring states to modify such practices. Article 5(a) of CEDAW obligates States Parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Both the Human Rights Committee and the Committee on the Elimination of Discrimination against Women have found that polygamous marriages discriminate against women and recommend their prohibition. The practice of polygamy violates Article 3 of the ICCPR, guaranteeing equal rights for women and men, violates a woman's right to equality in marriage, and has severe financial effects on her and her children. CEDAW, [Gen. Rec. 21](#), ¶ 14. Moreover, polygamy places woman and girls at greater risk of contracting HIV/AIDS when their husband has multiple sexual partners, and they have less power to negotiate safe sex. It also risks excluding additional wives from asserting their marital and inheritance rights.
- Drafters should ensure that laws prohibit polygamous marriages under both state and non-state systems. In doing so, it is essential that states recognize parties may circumvent laws by consummating multiple marriages under different systems. For example, a husband may marry under the civil law system, then take a second wife through a Nikoh/Nikkah, or Muslim, ceremony. Laws should prohibit multiple marriages, as well as prohibit marriage under one system if the party is already married under another system. In other cases, a husband may

be living in an unregistered union with multiple wives. Where no official marriage ceremony has taken place, drafters should consider adopting laws on common law marriage to hold polygynous husbands accountable. A common law marriage recognizes an informal union as a marriage although no formal civil ceremony or contract has been executed nor the marriage registered; such laws can be used to establish the existence of these de facto marriages.

- Under Sharia law, men may have up to four wives while women may only have one husband. The Mormon Church also allowed polygamy until the late 19th century, when it renounced the practice and now ex-communicates any members who practice it. South Africa prohibits bigamy in civil marriages, but allows for multiple customary marriages under the [Recognition of Customary Marriages Act](#) (Art. 2(3)). South Africa's law requires a husband, who is already in a customary marriage and seeking to enter an additional customary marriage, to obtain court approval of a contract governing the "matrimonial property systems of his marriages" (Article 7(6)).

CASE STUDY: The U.S. state of Utah has taken steps to combat the practice of polygamy, including adopting a constitutional prohibition against polygamy and hiring an investigator to investigate secret factions. Still, practices of polygamy still continue and must be sought out and prosecuted. Utah recently prosecuted and convicted Tom Green of four counts of bigamy under Utah law. Green sought to circumvent laws against bigamy by marrying each of his wives in Utah and obtaining divorces from them in Nevada. Prosecutors sought a court order to solemnize his marriage to his wife, thus laying the foundation for bigamy charges for his other four wives. Under [Utah Code Ann. §76-7-101\(1\)](#), a person commits bigamy when he marries or cohabitates with another person, with the knowledge that he has a husband or wife or the other person has a husband or wife; importantly, extramarital cohabitation can constitute the actus reus necessary for bigamy. The prosecution established that, despite Green's divorce decrees, he was effectively married to more than one woman under Utah's common law marriage law, [Utah Code Ann. §30-1-4.5](#). Under the common law marriage provision, a legal marriage can be established upon a court order that finds that a man and woman: (a) are of legal age and capable of giving consent; (b) are legally capable of entering a solemnized marriage under the provisions of this chapter; (c) have cohabited; (d) mutually assume marital rights, duties, and obligations; and (e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife. [Utah Code Ann. §30-1-4.5 \(1\)](#). In addition, prosecutors charged and convicted him of felony rape of an underage girl, who he later married.

- Drafters should include provisions which provide aid and assistance to wives of polygynous husbands. While prohibiting polygamous marriages is important to promoting women's human rights, drafters should consider the negative consequences it may hold for additional wives whose marriages go unregistered or unrecognized because of their illegal nature. As a result, these women may have no legal claim to marital property, cannot claim child support in the event of

a divorce, or may be excluded from inheritance. Polygamy may also drive families to live in isolated areas, which limits victims' access to information and services and requires greater vigilance by the state.

- Drafters should ensure that laws require religious leaders who perform marriage ceremonies first verify that the couple possesses a government-issued marriage certificate. Public education, outreach and monitoring are essential to facilitating compliance with this requirement. (See: [Marriage Vows Not Always Enough in Tajikistan](#), Institute for War and Peace Reporting, 2009) For example, the Tajik President issued an oral instruction to amend a 2007 Law on Traditions that would require mullahs to require a civil marriage certificate before performing a nikoh marriage.

Promising practice:

Sierra Leone: [Sierra Leone's Registration of Customary Marriages and Divorce Act](#) (2007) prohibits an individual, who is already married under the Christian Marriage Act, the Muslim Marriage Act or the Civil Marriage Act, to enter into a customary marriage with another person. Art. 3(1). The law likewise prohibits the reverse situation, barring anyone in a customary marriage from entering into a Muslim, Christian or civil marriage. Art. 4(1).

Morocco: Global Rights has explored the use of the marriage contract in Morocco, Tunisia and Algeria to prohibit polygamy. Policies should require public officials who conclude the marriage contract to inform parties of their rights to include other provisions, such as those pertaining to property or polygamy, in their contract. See [Conditions, Not Conflict: Promoting Women's Human Rights in the Maghreb through Strategic Use of the Marriage Contract](#) (2008).

Example: Kurdistan Law No. 62 (2001) bans polygamy except in conditional cases. (See: [Women Protest against Polygamy in Kurdistan](#), AWID, 2008) Legislators should ensure that polygamy is banned without exception.

CASE STUDY: South Africa's [Recognition of Customary Marriages Act](#) (RCMA) recognizes marriages under customary practices, which may include polygamous marriages. Customary marriages existing prior to the enactment of the RCMA are recognized under customary laws while those entered in to after enactment of the RCMA are recognized by the government only if the parties abide by the provisions of the RCMA. The RCMA requires that the spouses be over the age of 18 (or have parental consent) and that all parties agree to the marriage. The RCMA allows men to seek approval for another spouse, but does not extend the same to women. If the man is already in a customary marriage, his existing wife or wives must agree to the new marriage and be represented in discussions related to division of marital property. While one of the primary purposes of the RCMA is to provide a mechanism to protect the rights of existing spouses when a new polygamous relationship is proposed, it institutionalizes practices that discriminate against women and which are in contravention of the Bill of Rights in South African constitution which states:

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Men are permitted to marry more than one woman, while a similar rule does not apply to women. There may be little incentive, aside from honor, for men to register subsequent marriages in a patriarchal society where polygamy is not illegal. Theoretically, the property rights of the women in these relationships may be protected if the parties abide by the RCMA, but the unequal bargaining power of women due to their socio-economic or wife status renders this law discriminatory in impact. Legislation should ensure that conflicts between customary and formal laws should be resolved in a manner that respects women's human rights and principles of gender equality.

Addressing customary laws and practices that conflict with formal laws

Drafters should take steps to ensure that customary practices and laws do not condone or allow forced and child marriages. Many countries separate legal systems, and formal, customary, and even state-sanctioned customary legal systems may co-exist. Conflicts among these systems, both in the written laws and their application, can arise. While one system may provide protection to women from discrimination, another system may conflict in law or practice to discriminate against women. Laws should resolve conflicts between customary and formal laws in a manner that respects the survivor's human rights and principles of gender equality. (See: [UN Handbook](#), p.15) Drafters should ensure that any supremacy laws include outreach to local and customary leaders to facilitate the implementation of these guarantees. Laws should ensure that use of a customary adjudication mechanism does not preclude the victim from accessing the formal justice system.

(See: [harmful traditional practices](#))

Promising Practice: Fatwas, or Islamic legal pronouncements, are issued by scholars authorized to pronounce judgments on Sharia law. In 2001, two Bangladesh High Court judges declared it illegal for any authority except for the courts to issue fatwas. When the judgment resulted in widespread backlash, women's organizations supported them and leveraged global support for the decisions. (See: [Negotiating Culture: Intersections of Culture and Violence Against Women in Asia Pacific](#), Mishra, 2006, p. 31)

Civil laws

Registration of marriages and births

- Drafters should ensure that laws require the registration of births, deaths and marriages as a means of tracking marriages and parties' ages. Drafters should ensure that registration is required for all marriages, including both civil and customary unions. Data gathered through registration systems should be used to monitor and facilitate enforcement of the minimum marriage age standard, as well as compile statistics on marriages.
- Polygamous marriages pose particular challenges for registration systems. In states where polygamy is illegal, parties may not register their additional marriages for that reason. Drafters should ensure that laws require religious leaders who perform marriage ceremonies first verify that the couple possesses a government-issued marriage certificate permitting them to marry. For example, the Tajik President issued an oral instruction to amend a 2007 Law on Traditions that mandates mullahs to require a civil marriage certificate before performing a Nikoh/Nikkah marriage. Public education, outreach and monitoring are essential to facilitating compliance with this requirement. (See: [Marriage Vows Not Always Enough in Tajikistan](#), Institute for War and Peace Reporting, 2009) Drafters in countries where polygamy is still covertly practiced should modify marriage

registration requirements to allow a wife the ability to register her marriage independent of her husband.

Promising Practice: [Sierra Leone's Registration of Customary Marriages and Divorce Act](#) (2007) requires the registration of customary marriages. Either or both parties must notify the local council in writing within six months of the marriage. The registration must state the names of the parties, place of domicile, and that the conditions necessary for the customary marriage have been met. Any person who objects to the validity of the marriage under customary law may file an objection in the court. This latter is an important mechanism for civil society to monitor compliance with the law. The law prohibits marriages of children under 18 years of age unless their parents/guardians have consented. The law prohibits additional marriages under customary law when a Muslim, Christian or civil marriage already exists and vice versa.

If drafters choose to adopt legislation similar to that of Sierra Leone, drafters should ensure that the marriage registration process requires both parties to list their birth dates to ensure that parties are of legal age to be married. Where official birth records are not available, drafters should provide for alternative means of age validation, such as witness affidavits and school, baptismal and medical records.

Also, laws must take into account illiteracy rates that may prevent parties from registering their marriages. Drafters should provide for oral registration and an alternative signature, such as a fingerprint, and fund and train local civil society to provide free assistance in customary marriage registration.

U.S. Department of Health and Human Services, Centers for Disease Control, has developed a [Handbook on Marriage Registration](#) that may serve as a template.

CASE STUDY: [South Africa's Recognition of Customary Marriages Act](#) requires spouses in a customary marriage to register within three months of the marriage. Those who entered into a customary marriage prior to the act's entry into force have 12 months from the date of implementation of the act to enter into force. The bodies authorized to register these applications include the Home Affairs domestic office, or a designated traditional leader in areas where traditional leaders have been so designated. Spouses, plus a minimum of one witness for each of the spouses' families, and/or the representative of each of the families are to report for registration. Where one or both of the spouses were a minor at the time of a customary marriage entered into after November 15, 2000), they must have obtained consent of their parents, guardian, Commissioner of Child Welfare or High Court Judge, and the parents must be present at registration. Drafters should prohibit any customary marriages that allow a minor to marry irrespective of third party consent.

Civil remedy for victims of forced marriage

- Drafters should include a civil order for protection remedy for victims under threat of forced marriage or already in a forced marriage. The civil order for protection remedy should include the option for an emergency ex parte protection order. Laws should criminalize violations of protection orders. Drafters may apply much of the same theory on domestic violence to orders for protection in forced marriage cases: the goals are to afford protection to the victim through a speedy process that acts as an alternative to criminal prosecution. (See: Drafting Legislation on Domestic Violence, [Orders for Protection](#), and [Sample Orders for Protection](#), Stop VAW, The Advocates for Human Rights for information on orders for protection in domestic violence cases)
- Laws should ensure that where the petition is filed by a third party on behalf of an adult woman, the petition can only be brought with her consent. Third parties could misuse the provision, as in the case of an ex-partner seeking revenge by falsely claiming the victim is in a forced marriage or in cases where a state agency seeks an order for protection on behalf of a victim to recompense costs it incurred for housing the victim. An exception to the third party rule is where the victim is unable to file an application herself, whether because she is falsely imprisoned, in another country or is a vulnerable adult. In these cases, the rules of court should require that there be as much information provided as possible to demonstrate the likely level of the victim's support for the application. Third party applications on behalf of a child should only be permitted with court permission or appointment of a guardian ad litem, except in the case of local authority children's services who, as the relevant third party, no longer require leave of the court to issue an application on behalf of someone else. (See: UK Ministry of Justice, [Forced Marriage \(Civil Protection\) Act 2007: Guidance for local authorities as relevant third party and information relevant to multi-agency partnership working](#), October 2009; [Forced Marriage \(Civil Protection\) Act 2007 Relevant Third Party](#), Newham Asian Women's Project, 2008)

Promising practice: In 2007, the United Kingdom passed the [Forced Marriage \(Civil Protection\) Act 2007](#), which entered into force in 2008. The law enables a number of designated courts in England and Wales to issue Forced Marriage Protection Orders, including emergency (*ex parte*) protection orders, to protect victims who face the threat of forced marriage or those who are already in a forced marriage. Violation of a protection order is a contempt of court and punishable by up to two years' imprisonment. Judges may order the following types of relief:

- Prevention of a forced marriage
- Surrender of passports
- Cessation of intimidation and violence
- Disclosure of a person's whereabouts
- Prevention of taking someone beyond the country's borders

A policy paper, "[One Year On](#)," was produced to mark the first anniversary of the Act and provided a view of how the Act was being implemented. The report showed that the provisions were being used and that twice as many applications had been made in 2009 than anticipated. Also, in November 2009, the first conviction for violation of an order for protection against forced marriage was handed down. The perpetrator was sentenced to 200 hours of community service, however, rather than imprisonment. Violations of orders for protection should be criminalized and punished with a prison sentence. (See: James Tozer, [Spared Jail, The Forced Marriage Case Father Who Told Wife: "I'll Cut out Your Tongue](#), MailOnline, Nov. 19, 2009)

Promising Practice: Habeas corpus petitions have been sought in forced marriage cases in Bangladesh and Pakistan. Petitioners may bring an application under Article 102(2)(b) of the Bangladesh Constitution governing the powers of the High Court. "[I]f satisfied that no other equally efficacious remedy is provided by law..." the High Court may "on the application of any person, make an order- (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office." In this case, a third party or organization may file a habeas petition before the court regarding the alleged detention. In three cases, brought on behalf of British nationals forced to marry in Bangladesh, the court ruled that the women be released. (See Hossain and Turner, [Abduction for Forced Marriage: Rights and Remedies in Bangladesh and Pakistan](#)) These habeas petitions address women and girls in unlawful custody, such as a forced marriage that involves false imprisonment, but cannot be used to determine the validity of marriages. Also, a party may bring a habeas petition under Article 491 of the Code of Criminal Procedure (1898) regarding custody.

Criminal laws

Criminalization of forced and child marriage

- Legislation should criminalize forced marriage, and should acknowledge that any child marriage is by definition a forced marriage. Legislation should define forced marriage broadly, including free and full consent provisions described in [Defining and Establishing Consent](#). The offence of forced marriage should be graded based on harm and aggravating factors.

CASE STUDY: The UK government does not have a specific offence for forced marriage, but it does provide victims with a civil remedy, i.e. an order for protection, discussed supra. Also, it passed the [Domestic Violence, Crime and Victims Act of 2004](#), which criminalizes the violations of non-molestation orders issued under the Family Law Act 1996 and expands the availability of restraining orders under the Protection from Harassment Act 1997 in any cases of violence on sentencing or on acquittal.

In 2005, the Forced Marriage Unit (FMU) (joint Home Office and Foreign & Commonwealth Office (FCO) unit) issued a consultation, [Forced Marriage – A Wrong Not a Right](#). The paper sought views on whether a specific criminal offence would help combat forced marriage; how any proposed offences might be formulated; issues surrounding enforcement; and what the penalties of such a possible offence should be. It also invited responses on four options for legislation:

- A – grouping and renaming existing criminal offences;
- B – creating an offence of threatening to perpetrate existing criminal activities for the purpose of bringing about a marriage without the full and free consent of one or both parties;
- C – creating a new offence covering all unacceptable behaviour involved in forcing someone into marriage; and
- D – facilitating or bearing witness to a marriage in the knowledge or reasonable suspicion of the lack of consent of one of the parties.

The Forced Marriage Unit received 157 responses to the consultation. In response to the question, “Should forcing someone into marriage constitute a specific criminal offence?” 34% responded - yes; 37% - no; 10% unsure/possibly; qualified response with data – 4%; no response - 15%. While there was no clear majority among respondents about whether or not a specific offence of forcing someone into marriage should be created, the majority felt that the disadvantages of creating new legislation would outweigh the advantages and potentially drive forced marriage underground. The government decided against introducing a specific offence and following the introduction of a Private Member’s Bill, the civil remedy was implemented.

Some advocates have argued that criminal penalties are more effective because they recognize domestic violence as a crime and embody a statement by society that this abuse will not be tolerated. While an abuser is held "accountable" in both an OFP and a criminal proceeding, the sanctions available in criminal proceedings are considerably more severe. Orders for protection simply limit the defendant's conduct; criminal sanctions label that conduct as wrong. ([Orders for Protection](#), StopVAW, The Advocates for Human Rights) Furthermore, criminalizing the offence of forced marriage will impact public attitudes, deter forced marriages, facilitate the public sector response, grant greater bargaining power to youth, and clarify and facilitate action against perpetrators.

- The Norwegian government chose to criminalize the offence for its deterrent effect, but also adopted [rules](#) governing situations where forced marriages may be driven abroad.

Promising Practice: [Norway's Penal Code](#) (2003) punishes forced marriage as a felony against personal liberty. Sec. 222(2) states that "Any person who by force, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct forces anyone to enter into a marriage shall be guilty of causing a forced marriage. The penalty for causing a forced marriage is imprisonment for a term not exceeding six years. Any person who aids and abets such an offence shall be liable to the same penalty." Section 220 of the Penal Code imposes a punishment of up to four years' imprisonment for "any person who enters into marriage with a child under the age of 16, or who aids and abets such a marriage." In 2006, the Norwegian Supreme Court considered the issue of sentencing and increased the prison sentence for a father and his son who threatened violence against his 17-year-old daughter. The district court had sentenced them to ten and eight months; upon appeal, the Court of Appeal increased the term to 21 and 6 months. The Supreme Court increased the terms to 30 and 24 months, respectively. [Action Plan against Forced Marriage 2008-2011](#), Norwegian Ministry of Children and Equality, p. 11.

- Drafters should ensure that all individuals involved in facilitating forced and child marriages are held accountable for their role. Laws must address the indirect or direct roles that may be played by multiple perpetrators. Drafters should take into account the roles that family members, religious leaders, tribal council members, government employees and others may play in facilitating or authorizing forced and child marriages. Laws should ensure that these other third parties who are involved in or facilitate forced and child marriages are punished.
- If drafters do not criminalize forced marriage as a specific offence, they should ensure that perpetrators are prosecuted for such associated crimes as kidnapping, child abduction, false imprisonment, assault, battery, threats of violence or death, breach of the peace or conduct that disrupts the public order, harassment, child abuse, rape, sexual crimes, blackmail, and violations of protection orders. Drafters should institute intent to produce forced marriage as an aggravating factor in sentencing schemes.

Best Practice: The Crown Prosecution Service in England and Wales introduced monitoring procedures to flag "honour"-based violence, including forced marriage and thereby gauge the extent of instances as well as develop a particular approach to forced marriage. Guidance for prosecutors dealing with cases involving forced marriage and honour based crime will be released during early 2010. Specialist prosecutors have already been identified by all CPS Groups. Training for these prosecutors will commence in spring 2010 at London, Manchester and Birmingham. This will involve input from specialist support groups, as well as the Forced Marriage Unit.

Other related offences: criminalization of marital rape

- Legislation should specifically allow a husband or wife or intimate partner to be charged with sexual assault of his or her partner, whether or not they were living together at the time of the assault. Drafters should criminalize marital rape by stating that the relationship between the perpetrator and the victim does not bar application of sexual assault provisions. Legislation should include a provision that states that “no marriage or other relationship shall constitute a defense to a charge of sexual assault under the legislation.” (See [UN Handbook](#), 3.4.3.1, law of Nepal) Provisions should apply “irrespective of the nature of the relationship between the perpetrator and the survivor.” ([Criminal Code \(1958\) of Canada](#), § 278; [Marital and Intimate Partner Sexual Assault](#), StopVAW, The Advocates for Human Rights)

For example, the [Combating of Rape Act \(2000\) of Namibia](#) states that “No marriage or other relationship shall constitute a defence to a charge of rape under this Act.” (Section 2 (3)).

- Many countries retain some form of marital immunity for sexual assault, for example, less severe penalties for married offenders, or special procedural hurdles for married survivors. (See [Goldfarb](#) Expert Paper p.11 and [Spousal Rape Laws Continue to Evolve](#), Women’s Enews)

The [Parliamentary Assembly of the Council of Europe](#) recommended that member states:

“... establish marital rape as a separate offence under their domestic law so as to avoid any hindrance of legal proceedings, if they have not already done so; 5.3 [and]

penalise sexual violence and rape between spouses, cohabitant partners and ex-partners, if they have not already done so; and consider whether the attacker’s current or former close relationship with the victim should be an aggravating circumstance...” 5.4

The resolution also recommends that member states ensure that their legislation on rape and sexual violence reaches the highest possible standard, including providing victim support services and avoiding re-victimizing survivors through the criminal justice process. (See: [European Policy Action Centre on Violence against Women](#), “[Council of Europe Takes a Strong Position on Rape, Including Marital Rape](#)” (22 January 2010); and [Resolution 1691 \(2009\)](#), [Parliamentary Assembly of the Council of Europe](#))

- Legislation should not provide for less severe penalties for married offenders or special procedural hurdles for married survivors. (See: “[The Legal Response to Violence against Women in the United States of America: Recent Reforms and Continuing Challenges](#),” by Sally F. Goldfarb, a paper for the United Nations expert group meeting on good practices in legislation on violence against women, 2008).

- In cases of child marriage, drafters should ensure that provisions on rape of a minor also apply in situations where the husband is the perpetrator. Laws should prohibit and punish sexual intercourse with a minor, defined as any person under 18 years of age, as rape. Enacting statutory rape laws may also facilitate legal reform on minimum age for marriage laws. For example, in the U.S. state of Kansas, the minimum age to marry is 15 and only if a district court judge decides it is in the best interest of the minor. Until 2006, however, Kansas had no minimum age of consent if parents or the court approved of the marriage. This change may have been instigated by the case of Mathew Koso from Nebraska. When Koso was 20 years old, he began dating a 12-year-old and impregnated her when she was 13 years old. They entered Kansas to marry after her fourteenth birthday because, at the time, Kansas had no set minimum age for marriage if the minor had parental permission. Despite the marriage, Nebraska's Attorney General, charged Koso with breaking the state's statutory rape laws. Koso served 15 months for statutory rape. (K.S.A. § 23-106(c)(1) and (2) (2006); Age of Consent Muddles Law on Marriage vs. Rape, Bushey, C., Women's E News, 7 June 2007; Kansas Setting Minimum Marriage Age 15, Associated Press, 5 May 2006)

Other related offences: acts of retribution and intimidation

Drafters should appropriately penalize and punish acts of violence against women carried out as intimidation or retribution for refusal to marry. Such violence may include acid attacks, stove burnings or honor killings. In addition, laws should provide for adequate medical, legal and social services to victims of these attacks.

Promising practices: The [India Prevention of Offences \(by Acids\) Act \(draft bill\)](#) (2008) sets forth its objectives as part of the broader goal of combating violence against women. Currently, the Indian Penal Code criminalizes voluntarily causing hurt or grievous hurt using dangerous weapons or means, such as poison or corrosives (Art. 324, 326). The bill criminalizes acid attacks as a separate, serious, non-bailable and non-compoundable offence, addresses medical, psychological, social, rehabilitative and legal support for victims of acid attacks, establishes the roles and functions of the implementing authorities, and regulates acid and other corrosives. Compensation is earmarked for the victim's medical treatment, special needs and rehabilitation, and children in the event of her death. Such relief is not dependent on convictions or identification of the perpetrator.

India's Punjab state assembly passed a resolution calling for acid attacks to be treated as attempted murder and to be prosecuted by courts, not tribal leaders. This resolution, however, has no legally binding force. The national government should implement legislation to this effect.

On a grassroots level, an Indian NGO has established women's support groups in villages. This has been particularly empowering for the women, many of whom were newcomers to the village. These women have used the power of collective action to protect their rights. In these villages, wives have threatened to collectively leave the village if there are any instances of bride burning. (See: [Negotiating Culture: Intersections of Culture and Violence Against Women in Asia Pacific](#), 2006, p. 34) (See: [Honor Crimes; Dowry-related Violence](#))

Victims' rights and responding to victims' needs

Rights of victims

Drafters should consider integrating forced marriage laws, support and services with those of domestic violence. Domestic violence assumes many [forms](#), of which forced marriage is one type. Similar to domestic violence, forced and child marriage involves many of the same behaviors of power and control. (See: [What is Domestic Violence](#), StopVAW, The Advocates for Human Rights) By integrating forced marriage within a domestic violence framework, policymakers can ensure that victims of forced marriage are not excluded from existing support structures. Drafters need to be mindful, however, of the level of specialism required when dealing with “honour”-based violence and forced marriage. (See: [“Honour” Crimes](#)) In addition, drafters should consider integrating certain forms of forced marriage with laws on trafficking in persons. Trafficking laws that encompass forced marriage should provide for the physical, psychological and social recovery of victims. (See: [Domestic Violence](#); [Sex Trafficking of Women and Girls](#))

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

Promising Practice: Under France’s Framework Justice Act (2002), police are obligated to inform victims of their right to apply for compensation and seek a civil remedy. Also, police can register compensation claims on behalf of victims, thus eliminating the requirement for victims to go to court. (See: [Non-criminal Remedies for Crime Victims](#), Council of Europe, 2009) France has instituted a [state fund for compensation for victims of violent crimes](#), whereby victims may apply to the State Fund for Victims of Crime (pp. 14-15). Criminal justice bodies aid the fund by recouping funds from perpetrators. (See Reform Act 1990)

- Legislation should ensure that victims of child marriage have the right to an education, social reintegration and other assistance. Survivors of child marriage have often been denied their right to an education on an equal opportunity basis. Laws should ensure all appropriate assistance to victims of child marriage, including their full social reintegration and their full physical and psychological recovery.
- Legislation should provide access to health care, particularly reproductive health care and HIV prophylaxis. Women in polygamous marriages or girls in child marriages may have less power to negotiate safe sex practices, thus increasing their risk of contracting STDs and HIV. Also, girls who are forced into child marriages experience various health complications from early and frequent pregnancies and are at greater risk for reproductive problems, such as obstetric fistula. See supra: section on Establishing a Minimum Age for Marriage. The dearth of health clinics and trained health professionals aggravates these risks. UNICEF has found that girls under the age of eighteen are not physically prepared to give birth. Furthermore, an early pregnancy indicates that girls are more likely to bear more children more frequently throughout their lifetime. Finally, cultural taboos may prevent a mother from obtaining the nutrition she

needs. (See: [OHCHR Fact Sheet No. 23 Harmful Traditional Practices Affecting the Health of Women and Children](#), ¶ E (citing UNICEF)). Laws should take into account the physical consequences of forced, child and polygamous marriages.

- Legislation should require a free, 24-hour hotline that is accessible from anywhere in the country and staffed by persons trained in forced marriage issues. (See: [Crisis Centres and Hotlines](#), StopVAW, The Advocates for Human Rights) The hotline should be multilingual. States may want to consider establishing online counseling services and information, but should ensure they provide information on and mechanisms to preserve the privacy of the information seeker's website searches. (See [Electronic Information Privacy Center](#) for suggestions on protecting online privacy)

Promising Practice: The Swedish non-profit organization, [Terrafem](#), runs shelters and a hotline for women victims of violence. The hotline offers assistance in 43 languages, and the organization can offer legal advice in 25 languages. Importantly, any calls placed to Terrafem are free-of-charge and will not be listed on a phone bill.

- Legislation should provide for one shelter or refuge for every 10,000 inhabitants, providing safe emergency accommodation, qualified counseling and assistance in finding long-term accommodation. Shelter accommodation should take into account the particular needs of women and girls who are victims or potential victims of forced marriage. Policies should reflect the facts that victims may perceive their need for refuge as damage to their family honor, be subject to coercive and threatening behavior by family members to compel their return, and be forced to sever their contacts. In its report, [Active against Forced Marriage](#), the Ministry for Social and Family Affairs, Health and Consumer Protection of the Free and Hanseatic City of Hamburg recommends establishing special care that guarantees anonymity, provides counseling and care for victims taking into account the abrupt absence of family, and special protection measures for victims and shelter personnel. Furthermore, victims of forced marriage often require long-term accommodation to ease them into a life independent of their family. See: Section on Long-term Support for Victims.
- Legislation should guarantee the victim's right to free legal aid in all legal proceedings; free court support, such as accompaniment and/or representation by an appropriate service or intermediary, and; free access to qualified and objective interpretation. Laws should also protect the victim's right to decide whether to appear in court or submit evidence via alternative means, enable victims who testify in court to give evidence in a way that does not require them to confront the defendant, provide protection to the victim within the court infrastructure, require the victim to testify only as many times as is necessary, request closed courtroom proceedings where constitutionally permissible, and impose a gag on all publicity regarding individuals involved in the case with appropriate remedies for non-compliance. Laws should cross-reference witness

protection policies where applicable. In its report, [Active against Forced Marriage](#), the Ministry for Social and Family Affairs, Health and Consumer Protection of the Free and Hanseatic City of Hamburg recommends that victims be provided legal and psycho-social assistance from the start and throughout trial proceedings. Trained personnel should accompany victims of forced marriage to provide them with support and information on the proceedings and their rights. The court should always use court-sworn interpreters, rather than family members or unqualified interpreters, in proceedings (p. 39).

Promising Practice: In the UK (England and Wales), the legal aid waiver applies in forced marriage cases as it does in domestic violence. There is no maximum income or capital limit above which legal aid will not be available although the applicant may still be required to pay a contribution if their income or capital are in excess of a certain amount. The Funding Code criteria for domestic abuse is not limited to any particular definition of domestic violence or abuse but covers all applications to fund legal representation in family proceedings seeking an injunction, committal order or other orders for the protection of a person from harm, and including applications for Forced Marriage Protection Orders. In these cases, the Funding Code guidance requires the applicant to explain what action has already been taken by the police and what other protection, if any, is already in place. It will not, for example, generally be appropriate to grant public funding where the perpetrator is subject to bail conditions which provide protection to the applicant unless these conditions are likely to be lifted shortly following the determination of a criminal prosecution. This is not an absolute rule, however, and the extent of protection afforded to the applicant from any criminal proceedings must be considered in each case.

The applicant for public funding does not have to be British or be living in England and Wales to qualify for legal aid. The issue is whether the case relates to the law of England and Wales. Importantly, legal aid is available regardless of immigration status and even if the client has no recourse to public funds. Legal aid is not classed as a “public fund” for these purposes.

In some cases the victim may be overseas or it may not be immediately possible to provide evidence of means. In accordance with the guidance in relation to the use of devolved powers, provided the solicitor makes a justifiable estimate of whether the client is financially eligible and follows the devolved power guidance then they will, even if it turns out that the client is not eligible, be paid for the work done pursuant to the grant of emergency representation. However, because of the eligibility waiver which is available in these cases, the upper eligibility limit will not in any event apply and any issue will usually relate to the level of contribution payable.

Long-term support for victims

In addition to guaranteeing their immediate safety, legislation should ensure that survivors of forced and child marriage are provided with long-term care and support to assist with reintegration and address their physical, social and economic needs. Long-term support should protect women and girls who face the risk of retaliation from their families and former spouses and are unable to return to their families. Legislation should address their long-term needs, including identity protection, psychological counseling, reproductive health services, education, housing, financial support and vocational training.

- Legislation should state that social workers, health care providers, child protection agencies, attorneys and other professionals working with forced and early marriage victims must ensure the confidentiality of all information regarding the victim, including her identity. The whereabouts of forced and early marriage survivors should not be disclosed to anyone without prior consent. Laws should provide for penalties for unauthorized disclosure of this information.
- Legislation should provide for the development and support of long-term supervised housing projects, as recommended by the Ministry for Social and Family Affairs, Health and Consumer Protection of the Free and Hanseatic City of Hamburg in its report, [Active against Forced Marriage](#), for forced and child marriage survivors who a court finds cannot be reconciled with their families.
- Legislation should provide survivors with access to health care, particularly reproductive health care and HIV/AIDS and STI treatment.
- Legislation should include or refer to family law provisions on child support, including payment schedules and means of enforcement. Annulment of a marriage should not preclude an obligation to provide the survivor with child support.
- Legislation should include provisions on financial aid to allow forced and early marriage child marriage survivors to finish school, and should mandate the creation of a fund for this purpose. Scholarships and grants should be provided to offset the cost of tuition, books, supplies, public transportation and other school-related expenses. (See: [Ending Child Marriage: A Guide for Global Policy Action](#)) Financial aid beyond secondary school may be in the form of loans and may be made contingent on school performance.
- Legislation should ensure the creation or support of skill and vocational training programs to help forced and child marriage survivors move towards economic self-sufficiency. These programs should be structured in a way to meet the particular needs of survivors of different forms of violence. For example, laws should provide survivors of child marriage with parenting skills training.
- Legislation should provide for financial assistance for survivors of child and forced marriages while they attend school and develop the skills needed to become economically independent.

- Legislation should also provide for the protection of younger siblings of known victims, as these siblings may also be at risk of forced or child marriage. Drafters should require that the state child protection agency initiate an investigation to determine whether younger siblings of a known victim are at risk of becoming victims, and apply for a protection order if necessary. (See: Section on [Child Protection Provisions](#))

Addressing forced marriages involving immigrant women and girls

- States must also address forced marriages that involve immigrant women and girls. It is essential that laws distinguish between marriages of convenience and forced marriages, the former involving parties who presumably consent to the marriage to overcome immigration barriers and the latter involving a victim who does not consent. Equating the two situations risks failing to identify, protect and assist victims of forced and child marriage. At the same time, states must balance the right to family reunification with the interests of preventing forced marriages. (See Migrant Workers Convention and ICESCR. [Council Directive 2003/86/EC](#) on family reunification provides guidance on this aspect and recommends that Member States set a minimum age for the sponsor and spouse, no greater than 21 years, before the spouse can join the sponsor (Art. 4(5))

Example: The Belgian Marriages of Convenience Act (1999) requires registrars to issue a marriage declaration and notify the prosecutor's office where there is doubt regarding the parties' consent and intent to marry. The prosecution must show collective evidence that meets the requirements for legal suspicion, which may include admissions and witnesses. Evidence of a sexual relationship is a factor but not a definitive element. It is important that any similar legislation that seeks to prohibit marriages of convenience not penalize persons who may be victims of forced marriage. Any such legislation should provide for support structures where victims of forced and child marriage may seek assistance. Also, laws that impose cohabitation requirements should take into account situations of domestic violence that prevent spouses from living in the same residence. For example, Article 108 of the French Civil Code does not require spouses to live in the same home to meet the cohabitation requirement. In addition to addressing marriages of convenience, Belgium has criminalized the offence of forced marriage, by a prison sentence of one month to two years or maximum fines of EUR 500 to EUR 2,500. Attempted forced marriage is punishable by 15 days to one year's imprisonment or a fine of EUR 250 to EUR 1,250.

- Drafters should review and amend immigration and public benefits laws to protect victims of forced and child marriage. Laws should provide that survivors of violence against women are not deported or subject to other punitive immigration consequences when reporting violence to the police. Also, laws

should make immigrant survivors of violence eligible for and allow them to confidentially apply for legal immigration status independent of the perpetrator. See: [UN Handbook](#), p. 37. Some immigration laws grant visas to victims as part of an objective to investigate and prosecute crimes. These laws should prioritize victims' need for protection and services, rather than their value as a witness in criminal prosecutions. Such visas should give victims access to public benefits, grant them work permission, and facilitate family reunification for visa applicants whose applications may be delayed by ongoing investigations and prosecutions.

- Drafters should also review laws that restrict or bar immigrant women, particularly victims of domestic abuse, from accessing to public funds or assistance. Drafters should review financial assistance regulations, such as those requiring agencies to report immigration status that may have a chilling effect on women and girls in forced marriages from coming forward to seek help. Drafters should remove funding restrictions on legal aid organizations that prevent them from assisting undocumented immigrant victims of forced marriage, consider expanding public benefits to victims of forced marriage, and clearly delineate which public benefits an immigrant may receive without fear of negative immigration consequences. Victims of forced marriage may also require medical care, which would allow for identification of the problem and documentation and treatment of any injuries. Drafters should amend or adopt laws that allow immigrant victims of forced marriage to receive general medical assistance. (See: [The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report](#) (2004); Anitha Sundari, [Neither Safety Nor Justice: The UK government response to domestic violence against immigrant women](#), 30 *Journal of Social Welfare & Family Law* 189 (2008).

CASE STUDY: Battered immigrant women and children are eligible for certain public benefits in the U.S. Undocumented immigrants may also be eligible to receive assistance if they have submitted an application to immigration and can demonstrate a “substantial connection” between the violence and their need for public assistance. Immigrant women and children may be eligible to receive public benefits if they have been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, or their children have been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident parent. In both cases, the applicant must have a Violence against Women Act (VAWA) case or family-based petitions pending or approved before the U.S. Citizenship and Immigration Services. A VAWA case may render a victim of violence eligible for immigration status. (See [NOW Legal Defense and Education Fund](#), Public Benefits access to Battered Immigrant Women and Children. See: Domestic Violence)

Addressing rights of immigrant victims of forced marriages

Laws should provide for the production of outreach materials explaining eligibility, laws, and services in multiple languages and formats as part of outreach to immigrant communities. For example, the UK Forced Marriage Unit has developed a number of [materials for public education](#), including a leaflet and film on forced marriage, posters with contact information for the Forced Marriage Unit, a leaflet on forced marriage orders for protection a survivor's handbook, and leaflets and posters targeting youth and educators.

(See: Section on [Rights of Victims](#))

Promising Practice: The UK's [forced marriage unit](#) responds to and assists victims of forced marriage. The Forced Marriage website is available in [Arabic](#) and [Urdu](#). A [fact sheet](#) issued by Her Majesty's Courts Service outlines the process for obtaining an order for protection and is available in multiple languages.

In addition to protecting victims of forced marriage from negative immigration consequences, drafters should evaluate which law to apply regarding immigrant women and girls who are in forced marriages. Drafters face three possible choice-of-law options: applying the laws of the country-of-residence, applying the laws of the country of one party's nationality (often where the forced marriage took place), or allowing the party to choose between the laws of her nationality or the country-of-residence. Depending on the context, giving preference to the laws of the country-of-residence may better protect women's human rights, since countries where the forced marriage occurred may have laws that permitted the practice in the first place and thus discriminate against women. Drafters may wish to follow the [Council of Europe](#)'s recommendations giving priority to laws in the country of residence so as to prevent discrimination against women based on their status (p. 58).

Example: [Estonia's Civil Code](#) (1996) draws upon both the laws of the country-of-residence and the country where the marriage took place. Section 143(1) states that the requirements for marriage are to be determined by the laws of the future spouse's country-of-residence. Section 143(2) applies the laws of the country where the marriage took place to the marriage contract. Estonia recognizes any marriage entered into in another country or at a foreign representative institution providing it complies with Sections 143(1) and (2) or with the laws of the spouse's country of nationality.

Addressing extraterritorial jurisdiction

- Drafters should be aware that prosecuting forced marriage offences may cause perpetrators to remove women and girls to a third country for purposes of forced marriage. Should drafters choose to criminalize forced marriage, they should make provision for the extraterritorial application of the law. Similarly, governments have changed their laws to confer jurisdiction over FGM crimes committed by their citizens or permanent residents in other countries. (See: [Female Genital Mutilation](#)) Laws should allow for the prosecution of any citizen or permanent resident who commits or assists in bringing about forced marriage in another country, or assists another person in bringing about the forced marriage of a victim, who is a citizen, in another country.
- Drafters should review civil laws recognizing marriages that take place outside of the country. When granting legal recognition of a marriage contracted in a foreign country, laws should require the free and full consent of both parties to the marriage.

Promising Practices:

Norway promulgated new [rules](#) governing marriages outside of Norway when at least one of the spouses is a Norwegian citizen or permanent resident. A marriage that takes place outside of Norway will not be recognized in Norway if:

- One of the parties is under the age of 18 at the time of the marriage;
- The marriage is entered into without both parties being physically present during the marriage ceremony, e.g. a marriage by proxy or telephone marriage, or;
- One of the parties is already married.

If any of the conditions are met, the couple may be denied family reunification to live in Norway. Basing the spouses' ages on the time of marriage, rather than the application for family reunification, is an important safeguard against child marriages. The rules are available in Norwegian, English, Somali, Sorani, Arabic and Urdu.

Tunisia: Policymakers should work with other ministerial bodies when publishing guidelines concerning marriage contracts. Such guidelines should require public officials to inform women who intend to marry foreign men of their right to include clauses in their marriage contract to better protect their interests and human rights. Tunisia's Ministry of Justice issued recommendations to Civil Status Officials to inform Tunisian women of the option to provide conditions in their marriage contract prior to marrying a man of foreign nationality. (See: [Conditions, Not Conflict: Promoting Women's Human Rights in the Maghreb through Strategic Use of the Marriage Contract](#), Global Rights, 2008, p. 27)

Addressing forced marriages involving victims outside their country-of-residence

- Drafters should review diplomatic protocols to ensure that victims have access to consular assistance in third countries. Drafters should ensure that policies governing diplomatic assistance to dual nationals heed the country of habitual residence or greatest ties rather than defer to notions of state non-responsibility. Women and girls who possess dual citizenship particularly are at risk of being denied access to consulate assistance. Drafters whose states have ratified this convention may find it deters assistance to victims of forced marriage who have been removed from their country-of-residence to another country of nationality for purposes of forced marriage. States Parties to the [Convention on Certain Questions relating to the Conflict of Nationality Laws](#) (1930) are barred from offering “diplomatic protection to one of its nationals against a state whose nationality such person also possesses” (Art. 4). Drafters should take note of commentators’ view that this principle is premised on the outdated doctrine of non-state responsibility; dominant and effective nationality principles provide that, regardless of dual nationality, the state to which the person has the greatest connection may offer diplomatic protection. (See: Sara Hossain and Suzanne Turner, [Abduction for Forced Marriage: Rights and Remedies in Bangladesh and Pakistan](#), International Family Law, April 2001 (noting that commentary in the Explanatory Report of the European Convention on Nationality provides that a state may offer diplomatic protection to one of its nationals who holds dual nationalities))
- States offering diplomatic protection to victims of forced marriage in other countries must ensure appropriate guidelines and trainings are in place for consulate officials. Recommendations include: providing appropriate guidelines to consulate officials, in particular regarding assistance to dual nationality holders and not contacting relatives in the country-of-residence; training for consulate staff on women and girls’ human rights; establishing a database to monitor forced marriage cases; developing an intervention protocol modeled on child abduction responses; entering into consular agreements with other countries to ensure victims are guaranteed protection. (See: Hossain and Turner, 2001, 1-64, pp.15-24). (See also: Section on [Addressing Extraterritorial Jurisdiction](#))

Annulment of a forced marriage and divorce

- Drafters should consider the legal options for the victim to end a forced marriage. It is important to ensure that victims understand that a protection order or criminal sanction does not automatically annul or dissolve the marriage but provides the basis on which to do so.
- Laws should guarantee to women the same rights and responsibilities at the dissolution of a marriage as men. Laws regarding annulment of a marriage should safeguard both parties’ rights to property and guarantee them information regarding the proceedings. Any options for ending a marriage should protect her rights, including those related to property, child custody, immigration status and support.

- Laws may annul a marriage as void or voidable. Voiding a marriage does not require a formal decree and will render the marriage as though it never existed. Statutes generally void a marriage under certain fundamental conditions, for example, an absence of voluntary consent, a party is already married, a party is not of legal age, or the parties are related within a certain number of degrees.
- Drafters should be aware of civil laws that may negatively impact the status of children or property rights when a marriage is automatically voided. The [Newham Asian Women's Project](#) noted that children borne of voided marriages will be regarded as illegitimate in the UK unless both parties held a reasonable belief that the marriage was legitimate and the husband's residence is in England or Wales. In contrast, a voidable marriage requires a formal court decree for termination. Laws should not impose time restrictions upon when a party may seek to annul a marriage, but may instead increase the presumption of the marriage's validity with time.
- Drafters should eliminate any compulsory waiting periods for divorce aimed at facilitating reconciliation between parties in a forced marriage. Laws should not grant legal recognition to religious traditions that deny women due process in divorce proceedings. Divorce should only be recognized through formal legal mechanisms. For example, by saying "talaq" or "I divorce you" three times, a man can divorce his wife under Sunni Muslim tradition. Women who have been so divorced lose their home and financial support. Laws should establish a legal process and legal aid resources for women to assert claims for marital support, child custody and property claims against husbands who have divorced them in this manner.

Examples of laws:

- [Norway Act 47 of 4 July 1991](#) provides that either spouse may apply for annulment in cases of forced marriage or abuse. Section 23 states that a "spouse may also demand divorce if he or she has been forced by unlawful conduct to contract the marriage. This applies regardless of who has exercised such force."
- The [UK Matrimonial Causes Act of 1973](#) voids a marriage if "either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise." A party seeking to void the marriage must seek the annulment through civil proceedings within three years of the marriage.
- The [Hindu Marriage Act](#) provides for both automatic annulment and voidable marriages. In the former case, a marriage is automatically annulled upon petition if: a) either party already has a living spouse at the time of the marriage; b) the marriage is between relatives, except where custom governing each of them permits their marriage; c) The parties are sapindas--or descendants from the mother or father's lineage--of each other, except where custom governing each of them permits of a marriage between them. The law states that an "annulment

may be granted when a marriage is automatically void under the law for public policy reasons or voidable by one party when certain requisite elements of the marriage contract were not present at the time of the marriage.” In cases where consent was not present, annulment is not automatic, and the party must seek annulment. Valid grounds for annulment include consent due to unsoundness of mind or consent that was given due to force or fraud. The law imposes a deadline within which a party can seek annulment: the party cannot seek annulment if she presents her petition more than one year after the force had stopped or the fraud discovered, or the petitioner has lived with the spouse, with her full consent, after the force has stopped or the fraud discovered. Also, child marriage is subject to annulment, but the law differentiates between the minimum age for marriage for boys and girls. The minimum marrying age for boys is 21, whereas the minimum age for girls is 18. Establishing a lower age for girls discriminates against women, and the age should be equal for both men and women. The parties lose standing to annul the marriage, however, once the underage party voluntarily cohabitates with the spouse past the age of consent. Drafters should extend or remove the period of annulment. It may take the party time to access resources or gain the capacity to leave the marriage. Drafters should also remove the bar for annulment when parties have cohabitated past the age of consent.

Promising Practice: The Romanian Child Protection Service separated two children who were married. The girl was between the age of 12 and 14 years, and the boy was 15 years. The Child Protection Service mandated that the children are to return to their parents' homes, attend school and complete counseling at the state Child Protection Service until they reach the minimum age for marriage, which is 16 years. See: [ERRC Statement Concerning Recent Events Surrounding Romanian Romani Wedding](#), European Roma Rights Centre, 2003.

Child protection provisions

- Legislation should ensure that there are child welfare laws and policies to prevent child abuse.
- Legislation should identify child marriage as a form of child abuse.
- Legislation should mandate that child marriage prevention and prosecution are given the same resources as other forms of child abuse.
- Legislation should create a child protection system that contains, at a minimum, survivor support, alternative care options, family support services, justice system responses (see order for protection section below) and referral mechanisms. See: [UNICEF Child Protection Strategy](#) for all the components necessary to establish a child protection system. (See: [Child Protection: A handbook for Parliamentarians](#))

Core elements in child protection laws and systems to protect against forced and child marriage

The following elements should be established as the core elements in child protection laws and systems to protect against forced and child marriage. Elements are discussed in detail further below.

- Legislation should provide for an emergency order for protection remedy for a female in need of protection from undergoing forced and child marriage.
- Legislation should authorize the removal of the child from the home if the court determines that a responsible adult has a reasonable fear that a parent or parents or guardian are considering authorizing the performance of forced and child marriage.
- Legislation should authorize the placement of a child in danger of forced and child marriage in a shelter, refuge or foster home.
- Legislation should authorize the continuing placement of a child in a shelter or foster home until the child can be reconciled with the family, or, if the parent or parents will not give up their intention to force a minor child into forced and child marriage, authorization for the child to continue in shelter or foster care and attend school locally, or attend a boarding school to continue her education.
- Legislation should authorize the suspension of travel authority for the child if the court determines that the parents are considering authorizing forced and child marriage or if the court determines that the child or a responsible adult has a reasonable fear that the parents are considering authorizing forced and child marriage.
- Legislation should provide for procedures by which the parents can regain custody of the minor child, including receiving counseling and warnings. Once the minor child has been returned to her parents, legislation should provide for on-going visits to the minor child by social service providers and counselors to ensure the well-being of the minor child. Legislation should provide for counseling of parents to ensure that minor children do not receive pressure to enter into a forced and child marriage.
- Legislation should provide that where court orders are issued for protection against forced and child marriage, the order remain in place until the parents have demonstrated at a court hearing that they understand the adverse consequences of forced and child marriage, and that they will not subject their daughter to forced and child marriage.
- Legislation should provide for child-centered legal services, including representation for petitioning for civil or criminal liability victim compensation.
- Legislation should presume that there is no justification for forced and child marriage and it is in the child's best interests to not marry before the age of 18.

For example, [Ghana Children's Act of 1998](#), section 5 states:

“No person shall deny a child the right to live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would—

- (a) lead to significant harm to the child; or*
- (b) subject the child to serious abuse; or*
- (c) not be in the best interest of the child.*

Standing to apply for order for protection

- Legislation should provide that any reputable person, such as a family member, teacher, neighbor, or counselor, having knowledge of a child who appears to be in need of protection, and having reason to fear imminent harm for the child from forced and child marriage, may petition the court for an order for protection from forced and child marriage.
- Legislation should provide that a girl or woman over the age of 10 who has reason to fear her own imminent harm from forced and child marriage also has standing to apply for an order for protection.

Evidence needed to obtain order for protection

Legislation should state that the testimony of those with standing to apply for an order for protection from forced and child marriage, in court or by sworn affidavit, is sufficient evidence on its own for the issuance of the order for protection. No further evidence should be necessary.

Petition for emergency order for protection

- Legislation should provide that the petition for an emergency order for protection shall allege the existence of or immediate and present danger of forced and child marriage.
- Legislation should provide that the court has jurisdiction over the parties to a matter involving forced and child marriage, notwithstanding that there is a parent in the child's household who is willing to enforce the court's order and accept services on behalf of the family. This ensures continued protection in cases where parents may be divided on the issue of whether their daughter should be forced to enter into a forced and child marriage.
- Legislation should provide an emergency order for protection remedy for a female in need of protection from forced and child marriage. See: Domestic Violence.
- Legislation should state that there is no waiting period necessary for the emergency protection order to take effect.

The emergency order for protection should include:

- Injunction against the forced and child marriage;
- Suspension of parental authority if the court determines that a parent or parents are considering authorizing the forced and child marriage of a minor child or that the child or a responsible adult has a reasonable fear that the parents are considering authorizing a forced and child marriage; and
- Suspension of travel authority if the court determines there is risk that the child will be taken out of the country to enter into a forced and child marriage.

Travel Restrictions

Legislation should provide authorization for courts to suspend travel authority for the child if the court determines that the parents are considering authorizing a forced and child marriage or that the child or a responsible adult has a reasonable fear that the parents are considering authorizing a forced and child marriage.

Copy of Order for Protection to Law Enforcement Agency

An emergency order for protection shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the child.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system of verification, information as to the existence and status of any order for protection issued.

Parental intervention and education program

Legislation should provide that the parent, parents, or guardian of a child in a shelter, refuge or foster care home shall attend an intervention and education program on the issue of forced and child marriage and its adverse consequences. Legislation should require that the intervention and education program be established by NGOs with experience in this field. Legislation should require that the state fund the intervention and education program.

Review of status of child in shelter, refuge or foster care home

- When an emergency order for protection is in effect and a child is residing in a shelter, refuge, or foster care home, the court shall periodically review the status of the child and of the parent or guardian regarding the issue of forced and child marriage. (See Hearing by Court below).
- If the court finds that it is in the best interest of the child, the court may order that the child may return home to her parents.

- Legislation shall provide that all other terms of the order for protection, including the injunction against travel and the injunction against forced and child marriage, shall remain in place until the court finds that it is in the best interest of the child for each injunction to be lifted.
- Legislation should require follow-up monitoring of the child who returns to her parents to ensure that a forced and child marriage does not take place later.
- Legislation should provide that if the court finds that it is in the best interest of the child to remain in the shelter, refuge or foster care home, the court may continue the child's placement in the facility.

Violation of order for protection

Legislation should state that violation of the emergency order for protection is a crime.

No time limit on order for protection

Legislation should state that an emergency order for protection should be left in place permanently, or until lifted by decision of the court after a hearing, or until the child attains the age of majority.

Hearing by court

- Legislation should provide that a parent, parents or guardian may request a hearing on the emergency order for protection to determine whether the child shall continue to reside at a shelter, refuge, or foster home.
- Legislation should provide that the hearing shall occur within 3 days of the removal of a child to a shelter, refuge, or foster home.
- Legislation should provide that hearings by the court on an emergency order for protection shall be without a jury and may be conducted in an informal manner. In all court proceedings involving a child alleged to be in need of protection, the court shall admit only evidence that would be admissible in a civil trial.
- Legislation should provide that allegations of a petition alleging a child to be in need of protection must be proved at trial by clear and convincing evidence.

Right to participate in proceedings

Legislation should provide that a child who is the subject of an emergency order for protection hearing, and the parents, guardian, or legal custodian of the child, have the right to participate in all proceedings on an emergency order for protection hearing.

Testimony of child

- Legislation should provide that in the hearing for the order for protection, the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so.
- Legislation should provide that informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom.
- Legislation should provide that the court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed.
- Legislation should provide that the court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned.

CASE STUDY: United States, Minnesota

The Child Protection Statutes for the State of Minnesota in the United States provide protective provisions regarding the examination and testimony of a child within the child protection services.

2009 Minnesota Statutes, Child Protection, [Minn. Stat. 260C.163](#) – Hearing:

Subd. 6. Examination of child.

In any child in need of protection or services proceeding, neglected and in foster care, or termination of parental rights proceeding the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so. Informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom. The court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed. The court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned in accordance with subdivision 7.

Subd. 7. Waiving presence of child, parent.

The court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In any proceeding, the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian.

Child protection advisory body

- Legislation should mandate the formation of a child protection advisory board consisting of experts in the field who will be able to identify problems with implementation of the law and areas in which more research is needed.
- Legislation should require that the advisory board be charged with the duty of researching customary laws, community practices, and attitudes so that evolving practices may be noted and amendments to the law may be drafted as needed.

Data collection on emergency orders for protection

- Legislation should require data collection on specific aspects of the implementation of the new law, such as number of emergency orders for protection sought, granted, denied, cancelled, or appealed.
- Legislation should require that the data be able to be disaggregated by the type of order for protection sought so as to be able to identify an order for protection on the basis of forced and child marriage, as well as the general identity of the petitioner (the individual at risk, family member, or other aware individual).
- Legislation should require that this data be kept and made available publicly.
- Legislation should require qualitative data about the effectiveness of orders for protection to be gathered on a regular basis from police, courts, child protection agencies, counseling centers, shelters, schools, and from survivors.
- Legislation should require that this data be compiled by the relevant government ministry and be published on an annual basis.

Roles and responsibilities

Duties of police

The [UN Handbook](#) sets forth several recommendations for laws governing the police response to violence against women. Police should:

- RESPOND promptly to all requests for assistance and protection, even when the person who reports such violence is not the complainant/survivor;
- ASSIGN the same priority to calls concerning cases of violence against women as to calls concerning other acts of violence; and
- UPON receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the complainant/survivor, including by:
 - interviewing the parties and witnesses, including children, in separate rooms to ensure there is an opportunity to speak freely;
 - recording the complaint in detail;
 - advising the complainant/survivor of her rights;
 - filling out and filing an official report on the complaint;
 - providing or arranging transport for the complainant/survivor to the nearest hospital or medical facility for treatment, if it is required or requested;
 - providing or arranging transport for the complainant/survivor and the complainant/survivor's children or dependents, if it is required or requested; and
 - providing protection to the reporter of the violence.

Policymakers should consider the UK's [multi-agency guidelines](#) for addressing cases of forced marriage when developing police protocols. Legislation should reflect the overriding message to all agencies of the "one chance rule:" if someone discloses to another person that they are being forced into marriage, that agency's effective response is vital. These guidelines set forth the recommended police response in four situations of forced marriage: 1) a potential victim who fears a forced marriage; 2) a third party who reports that a victim has been taken overseas for purposes of a forced marriage; 3) a victim in a forced marriage, and; 4) an immigrant in a forced marriage and in the UK. Drafters should consider outlining specific guidelines for responding to different types of forced marriage cases. The following is a basic compilation of the UK guidelines, but drafters may wish to consult the guidelines for more detailed guidance.

When police meet with the victim, the following minimum standards are recommended in a police response protocol:

- MEET with the victim alone in a safe and private location
- REASSURE the victim about confidentiality and respect the victim's desires

- ESTABLISH a means of contacting them in the future and a code word to correctly identify the person speaking as the victim
- PROVIDE the victim with all options and remedies available, which may include annulment, divorce, protection orders, harassment restraining orders
- INFORM the victim of her right to seek legal advice
- ADVISE the victim not to travel abroad. Should the victim need to travel to another country, police should take the following appropriate precautions:
 - Obtain a copy of her passport, as well as information about the family (name and birth date of the victim, father's name, overseas address, name of potential spouse and father-in-law, date of wedding, contact information for family in both countries), details of travel plans and companions, contact information for close relatives in the country of departure, approximate return date, contact information for a third person, safe way of contacting the victim while abroad, information only the victim would know. Police should also ask the victim to contact them upon return and obtain their written declaration that they authorize the police or other appropriate state actor to act on their behalf should they fail to return by a given date.
- PROVIDE the victim with personal safety advice

Once the police have met with a person reporting a case of forced marriage, the following minimum standards are recommended in a police response protocol:

- DEVELOP a safety plan should they be seen meeting with police
- RECORD any injuries and coordinate a medical examination
- INVESTIGATE whether there is a family history of forced marriage
- IDENTIFY any crimes that may have been committed and obtain details of threats, abuse or other hostile actions
- RECORD all decisions and the reasons for them
- CONSULT with the forced marriage or other appropriate department
- REFER to other appropriate protocols and procedures on other related issues, such as domestic violence, harassment, and criminal investigations,

Also, police should coordinate with other sectors and make referrals as appropriate. The following minimum

- REFER the victim to child protection services if the victim is a child
- PROVIDE the victim with referrals to a forced marriage specialist, offering a choice of ethnicity/sex where possible, as well as referrals to appropriate service providers
- REFER the victim to other appropriate service providers

Other actions include:

- OBTAINING the details of the person contacting the police, whether a third party or the victim
- OBTAIN a photograph and other identification documents of the victim or potential victim
- ASSESS the nature and level of risk to the victim
- OBTAIN contact information for trusted friends and relatives of the victim
- WITH regard to immigrant women in a forced marriage present in the UK, the police should use an authorized interpreter, be culturally sensitive to their needs, provide referrals to appropriate service providers, specialists in forced marriage if available, and to immigration legal services if necessary, document injuries and arrange for a medical examination.

Police protocols should take into account that survivors/complainants of forced marriage may have been sexually assaulted. The sexual assault may have occurred as marital rape, as an honor crime where the victim is forced to marry her rapist, or as part of the unlawful conduct used to bring about the forced marriage. An effective police protocol to responding to sexual assault victims is essential to prosecuting perpetrators and deterring future offences. Laws and policies should ensure police coordinate with other relevant actors, including prosecutors, victim support groups and other agencies and individuals involved in the case. Because police are responsible for collecting evidence, laws must provide for training for both new and existing police officers. (See: [Sexual Assault](#); [Honor Crimes](#))

When responding to survivors/complainants of forced marriage, police should be aware they may be victims of trafficking or mail order brides. (See [Sex Trafficking of Women and Girls](#))

Finally, drafters should provide accountability mechanisms to ensure that police exercise due diligence in investigations and appropriate responses to victims or potential victims. Discriminatory attitudes toward women may result in a failure to investigate the case or respond effectively. Drafters should impose a penalty on law enforcement who fail to exercise due diligence in responding to cases of forced marriage. Philippine's Anti-Violence against Women and their Children Act of 2004 fines local officials and law enforcement who do not report an act of violence (Section 30). In addition, training is necessary to ensure that police are sensitized to the issue and respond appropriately.

Duties of prosecutors

The [UN Handbook](#) sets forth minimum recommendations with regard to the duties of prosecutors in prosecuting cases of violence against women:

- Establish that responsibility for prosecuting these cases lies with prosecution authorities, not victims;
- Require that victims, at all relevant stages of the legal process, be promptly and adequately informed, in a language they understand of:
 - Their rights,
 - Details of the relevant legal proceedings,
 - Available services, support mechanisms and protective measures,
 - Opportunities for obtaining restitution and compensation through the legal system,
 - Details of their case's proceedings, such as hearings,
 - Release of the perpetrator from pre-trial detention or from jail, and
- Require that any prosecutor who discontinues a case of violence against women explain to the victim why the case was dropped.

Where states have not created a specific offence of forced marriage, drafters should ensure that these duties are still applicable to other crimes perpetrated in the course of forcing someone to marry, such as rape, sexual crimes, kidnapping, child abduction, false imprisonment, assault, battery, threats of violence or death, breach of the peace or conduct that disrupts the public order, harassment, child abuse, blackmail, and violations of protection orders.

Prevention of forced and child marriages

- Drafters should consider following the Council of Europe Parliamentary Assembly's suggestions on prevention of forced marriages. Laws should provide for: awareness-raising and training for women, girls and their families on human rights; information in multiple languages about the laws and best practices, as well as highlighting consequences for perpetrators and protection measures for women and girls; information to women and girls about protection measures available to them; and support for NGOs, particularly those that work with immigrant communities. See: [Resolution 1662](#), ¶ 7.5.
- Drafters should also look to the report of the Special Rapporteur on the human rights aspects of trafficking in persons, especially women and children for guidance on preventative measures. States should implement laws and various measures that target the demand for forced marriages; monitor and establish protection measures in the marriage market trade; ensure that background and criminal history checks are a necessary condition for men who apply for foreign spouse visas; ensure that girls have equal access to education; review and

develop civil remedies for victims, including simpler annulment procedures, civil tort remedies and extended statutes of limitation in forced marriages; support organizations assisting victims of violence against women and create more facilities to assist these victims; consider criminalizing the specific offence of forced marriage; prosecute other related crimes, such as rape, sexual abuse and violence, and; prohibit children under the age of 18 years from marrying and other harmful practices, such as polygamy and marriage by proxy. See: Special Rapporteur on the human rights aspects of trafficking in persons, especially women and children, Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "[Human Rights Council](#)," 2007.

- Drafters in donor countries should consider legislation that provides foreign assistance and capacity-building to prevent forced and child marriages. For example, the U.S. House of Representatives passed the [Foreign Relations Authorization Act \(H.R. 2410\)](#), which aims at preventing child marriages in developing countries. The bill envisions a [multi-year strategy to combat child marriage](#) in developing countries with a high incidence of the practice. The strategy would seek to empower at-risk girls under 18 years of age through diplomacy and “attention to human rights, legal reforms and the rule of law, and programmatic initiatives in the areas of education, health, income generation, changing social norms, human rights, and democracy building.” The bill would obligate relevant U.S. agencies to gather data on the incidence of child marriages in those countries and include updates about the practice in the U.S. Department of State human rights reports. The bill, however, defines child marriage as the marriage of a child who has not yet attained the age as that set by the country. This knowledge asset recommends that child marriage be defined as the marriage of a child under the age of 18 years.

Promising Practices:

Germany's Youth and Sport Department of the Federal State of Berlin funds the Papatya Association, which counsels and protects girls seeking help from forced marriages. The association acts as an intermediary between the girl and her family, and if needed, provides her with shelter. Trained social workers help them develop a plan to return to their parents or live separately. (See [Forced Marriages in Council of Europe Member States](#) (2005), p. 53)

Ethiopia: The [Berhane Hewan](#) in Ethiopia works to prevent child marriage by working with unmarried girls and those in child marriage. Although funded by UN and other bodies, the Ministry of Youth and Sports and the Amhara Region Youth and Sports Bureau is the implementing machinery. Developed in consultation with the local community, the girls learn to read, basic life skills and study reproductive health through a mentorship style system. The project also reaches out to families by facilitating monthly dialogues and teaching them skills, such as how to build better stoves—which, in turn, reduces the workload burden on married girls.

Public awareness

- Legislation should direct appropriate bodies to develop multi-agency strategies that provide for public information campaigns aimed at educating women and girls about their rights, the law and the prevention of forced marriage. (See: [Forced Marriage in Council of Europe Member States](#), Council of Europe, 2005, p. 58) Public education campaigns should focus on educating parents and other community members about the negative physical, emotional, psychological, intellectual and sexual implications of forced and child marriage on women and girls. Public information should particularly target rural, marginalized and immigrant women, who may be at greater risk for forced and child marriage.
- Outreach should target and engage religious and community leaders to increase their awareness. Public education programs should encourage them to emphasize to their communities that marriage requires the free and full consent of both parties. It is essential that religious and traditional leaders understand domestic laws related to forced marriage and how the practice of forced marriage violates women and girls' human rights.

(See: [Implementation of Laws on Violence against Women and Girls](#))

Promising Practice: The UK has established a [forced marriage unit](#) to respond to and assist victims of forced marriage. The unit has developed a number of outreach and educational materials, including informational brochures, posters, and a survivor's handbook. In addition, it has developed statutory guidance and practice guidelines for different agencies and responders on handling forced marriage case: [The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage](#), [Forced Marriage \(Civil Protection\) Act 2007: Guidance for local authorities as relevant third party and information relevant to multi-agency partnership working](#), and [Multi-agency practice guidelines: Handling Cases of Forced Marriage](#). The UK Forced Marriage Unit has produced the [Forced Marriage Case Handling Guide for MPs and Constituency Offices](#). This resource advises parliamentary members on how to better respond to forced marriage cases and where to direct victims. The Ministry of Justice has also provided separate guidance for local authority Relevant Third Parties and is working with local courts to develop a national court resource manual and with the Judicial Studies Board to revised guidance on forced marriage for the judiciary.

Statistics gathering

- States should collect gender-disaggregated data on forced and child marriages on a domestic, regional and international level and cross-compare them to other statistics on crime, gender equality and migration. An important part of gathering statistics for forced and child marriages require the establishment of registration systems for births, deaths and marriages. (See: [Registration of Marriage and](#)

Births) Also, drafters should establish a system for the registration of forced marriage cases by all agencies, neighborhood, local and regional authorities, public service providers and non-governmental organizations working on the issue.

- Reliable statistics on the prevalence of violence against women are essential to developing effective legislation and to developing strategies and protocols for the implementation of the legislation. Legislation should require the state to develop a methodology to obtain statistics on each of the types of violence against women. (See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#))
- Statistics on the frequency of acts of violence against women should be obtained from relevant government ministries, law enforcement, the judiciary, health professionals, and non-governmental organizations which serve survivors of violence against women. These acts should be disaggregated by gender, age, relationship between offender and survivor, race, ethnicity, and any other relevant characteristics. Monitors should note whether or not such data is publicly available and easily accessed. See: [Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and state response, A/HRC/7/6](#), p.19, CENWOR in Sri Lanka, and CORE GAD in Philippines ([ESCAP paper](#), p. 6)
- Statistics should also be gathered on the causes and consequences of the acts of violence against women. (See: [UN Handbook](#), 3.3.2, [Guatemala's Law against Femicide and other Forms of Violence against Women](#) (2008), [Mexico, Law on Access of Women to a Life Free of Violence](#) (2007)) Data should also be collected on offenders, including whether and when an abuser re-offends. (See: [UN Handbook](#) 3.3.2)
- Monitors should also determine the number (per population statistics), geographic distribution and use statistics for hotlines, shelters and crisis centers. See: [Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and state response, A/HRC/7/6](#), p. 28, and [We Can End VAW Campaign](#) (South Asia); and [Raising Voices](#) (Uganda)
- Monitors must also determine the numbers of cases of all forms of violence against women and girls that are reported to law enforcement officials, and whether or not they are charged, if they go to trial, and how many convictions result.
- In some states, statistics on many of these issues will be readily available in administrative offices or national statistics or crime bureaus; in others, monitors will need to pose exact and strategic questions to government officials in law enforcement administration who are in a position to provide the information that is required. This may involve a multi-step process of formal interview requests but it can be well worthwhile.

- For an analysis of national surveys carried out by the countries at the conference of European statisticians to measure violence against women, see the Economic Commission for Europe, [Work session on gender statistics](#), (2006).

See: [Addendum on Developing Transnational Indicators on Violence Against Women to Report of the Special Rapporteur on violence against women, its causes and consequences](#), 25 February 2008, A/HRC/7/6/Add.5, p. 12-13; and Monitoring of Laws on Violence against Women and Girls.

Trainings

- Drafters should ensure that laws provide for training for prosecutors, law enforcement, judiciary, social service providers, consular personnel, and child welfare specialists. A comprehensive training program should focus on a variety of professionals whose work is connected with domestic violence and include training initiatives that range from general awareness-raising to specific policy development and implementation. States should "create, improve or develop as appropriate, and fund the training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuse of power leading to violence against women and sensitize such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured." (See: [Beijing Platform for Action](#)) Other key actors who would benefit from training programs include politicians, the media, students and the general public.
- Policymakers should ensure that trainings are framed in the context of forced and child marriage. See: [General guidelines for developing a training](#), StopVAW, The Advocates for Human Rights. The guidelines cover such as basics as preparing the training, conducting exercises, training methods, organizing a training workshop, and tips for facilitators. [General trainings on gender-based violence](#) are also available. ECPAT has published [Combating the Trafficking of Children for Sexual Purposes: A Training Guide](#), which includes logistical information and a substantive training course. Drafters should ensure that the development of trainings is conducted in consultation with NGOs working on violence against women, particularly forced and child marriage, and with immigrant women.

(See: [Implementation of Laws on Violence against Women and Girls](#))

Female Genital Mutilation/Cutting

Throughout this knowledge asset, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a good example or a promising practice.

Some of the laws cited herein may contain provisions which authorize the death penalty. In light of the United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

Overview

General principles for legislation on female genital mutilation

Clear and precise definition of female genital mutilation

Criminalization

Child protection provisions

Victims' rights and responding to needs

Roles and responsibilities

Broader coordinated policies

Tools

Overview

Use of term “female genital mutilation”

- This portion of the Knowledge Asset will use the term “female genital mutilation” (FGM) and explicitly rejects often substituted terms, “female genital cutting” or “female genital circumcision.” To use the terms female genital cutting or circumcision downplays the pain and suffering inflicted on women and girls subjected to this practice, as well as the severe physical and psychological health consequences. The terms “cutting” or “circumcision” also cause confusion between female genital mutilation and the common practice of male circumcision. Such use invites the argument that because both women and men are circumcised, often as children below the age of consent, female genital mutilation is not a discriminatory practice against women and hence not a human rights violation. This argument, however, is without merit. While both traditional male circumcision and female genital mutilation involve the removal of healthy tissue, FGM is distinguished by the severity of the practice, the devastating consequences of the practice, as well as the social message associated with the practice. (See: Female Genital Mutilation: A Guide to Laws and Policies Worldwide, Anika Rahman and Nahid Toubia, p. 21)

Almost all those who are subjected to FGM experience extreme pain and bleeding. Other health complications include psychological trauma, infections,

urine retention, damage to the urethra and anus, and even death....The consequences of FGM do not stop with the initial procedure. The girl or woman is permanently mutilated and can suffer other long-term physical and mental consequences.

(See: [UNHCR Guidance Note on Refugee Claims Relating to Female Genital Mutilation, May 2009](#))

- In addition to increased risk during childbirth for both the mother and the baby, the Special Rapporteur on Torture has stated:

Depending on the type and severity of the procedure performed, women may experience long-term consequences such as chronic infections, tumors, abscesses, cysts, infertility, excessive growth of scar tissue, increased risk of HIV/AIDS infection, hepatitis and other blood-borne diseases, damage to the urethra resulting in urinary incontinence, [fistula], painful menstruation, painful sexual intercourse and other sexual dysfunctions

(See: Human Rights Council, [Report of the Special Rapporteur on Torture and other cruel, inhumane or degrading treatment or punishment, 15 January 2008](#))

- Even at its least invasive level (see [Clear and Precise Definition](#) of FGM below), the practice of FGM involves a much more extensive removal of a woman's sexual organ. In addition, the common justifications for the practice of female genital mutilation are generally mired in the fundamental belief of the subordination of women and girls as well as the need to control women's sexuality. (See: [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), Chapter 1) Only the term "female genital mutilation" accurately reflects and distinguishes the severity of this harmful practice as a human rights violation.
- The term female genital mutilation was adopted at the 1990 third conference of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, in Ethiopia. It is also used regularly by the United Nations in their documents and is consistently employed by [WHO](#). (See: [Eliminating Female Genital Mutilation: An Interagency Statement](#))
- As such, legislation created to eliminate this practice and provide services to women and girls subjected to this practice should also use the more accurate term "female genital mutilation."

Guiding principles for drafting legislation on female genital mutilation

- Legislation should specifically define, prosecute and punish FGM. Although female genital mutilation may be prosecuted under general criminal legislation such as assault, or constitutional measures such as equality and protection from violence, for the most effective implementation, drafters should create legislation specific to FGM. (See: [European Parliament Resolution of 20/09/2001 A5-0285/2001](#); [European Parliament Resolution 16/01/2008, INI/2007/2093](#), [European Parliament Resolution of 24 March 2009 \(2008/2071\(INI\)\) P6_TA\(2009\)0161](#); [Council of Europe Resolution 1247](#), and [Eliminating Female Genital Mutilation: An Interagency Statement](#))
- Legislation should be carefully drafted to protect actual and potential victims, many of whom are very young girls. The practice of FGM is mired in issues of gender, women's status and women's own self-identity. While the practice of FGM is a recognized human rights violation, not undergoing the practice can subject women to other forms of discrimination and harm. Therefore, while laws are a critical means to eliminating the practice of FGM, stopping the practice involves deeper changes to societal norms and individual beliefs.
- Government action and legislation must take multiple forms and include various groups, including educational, legal, health services, cultural and religious leaders to effect true change and an end to the practice of FGM. "While use of legal measures needs to be carefully considered and used in conjunction with other education efforts, laws can be a useful tool for change, giving NGOs and individuals greater leverage in persuading communities to abandon the practice." ([Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), p.13)
- Governments should pay particular attention to implementing and monitoring legislation against FGM. (See: [Implementation](#) and [Monitoring](#) Sections of this Knowledge Module.

Sources of international human rights law on female genital mutilation

Categories of fundamental human rights and duties

FGM is a violation of the human rights of women and girls as recognized in numerous international and regional human rights instruments. While early human rights instruments do not specifically refer to FGM, they provide a foundation for the right of women to be free from various forms of violence, including FGM. In addition to the specific human rights instruments included in this section below, there is an increasingly accepted interpretation that the practice of FGM is an infringement upon broader categories of identified rights into which those instruments may fit. (See: [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), Chapter 2 for full discussion)

- **The right to be free from all forms of discrimination against women**

[Article 1](#) of the [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979 defines discrimination against women broadly as:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The practice of FGM fits within the definition of discrimination against women as set forth in various human rights instruments as a practice exclusively directed towards women and girls with the effect of interfering with their enjoyment of their fundamental rights. Furthermore, FGM causes great short-term and long-term physical and mental harm to its victims and perpetuates the fundamental discriminatory belief of the subordinate role of women and girls. Article 2 of the [Universal Declaration of Human Rights](#) states: *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex.”*

The practice of FGM is often a deeply rooted custom and in areas where the practice is required or prevalent, there is substantial pressure to undergo FGM. Often it is a prerequisite to marriage and required for acceptance within the community. Governments enacting legislation to prohibit the practice must acknowledge that not undergoing FGM may also subject women to further discrimination as they are ostracized or not able to marry. As such, governments must address the larger issues of women’s status in the family and economy, their access to education and health services, and the overall social norms and customs that support the practice of FGM.

- **The right to life and physical integrity, including freedom from violence**

The right to physical integrity includes the right to freedom from torture, inherent dignity of the person, the right to liberty and security of the person, and the right to privacy. This category of rights is protected by various human rights instruments including: The [Universal Declaration of Human Rights](#), Articles 1 and 3; [International Covenant on Economic, Social and Cultural Rights](#), Preamble; [International Covenant on Civil and Political Rights](#) (ICCPR), Preamble and Article 9 (1); and The [Convention on the Rights of the Child](#) (CRC), (Article 19) FGM causes severe physical and mental damage, sometimes resulting in death. As such, it interferes with a woman’s right to physical integrity, privacy, and freedom from violence.

- **The right to health**

Because FGM can result in severe physical and mental harm and because it constitutes an invasive procedure on otherwise healthy tissue without any medical necessity, it is seen as a violation of the right to health. The [International Covenant on Economic, Social and Cultural Rights](#) recognizes the right of all human beings to the “highest attainable standard of physical and mental health.” The [World Health Organization](#) includes physical, mental and social well-being in its definition of health and recognizes that health is “not merely the absence of disease or infirmity.” The [Programme of Action of the International Conference on Population and Development in Cairo, Egypt](#), includes “sexual health, the purpose of which is the enhancement of life and personal relations” in its discussion of reproductive health.(Para.7.2) Furthermore, the [Committee on the Elimination of Discrimination against Women \(CEDAW\), General Recommendation No. 24](#) (20th Session, 1999) has specifically recommended that governments devise health policies that take into account the needs of girls and adolescents who may be vulnerable to traditional practices such as FGM.

- **The rights of the child**

Because FGM predominantly affects girls under the age of 18, the issue is fundamentally one of protection of the rights of children. The [Convention on the Rights of the Child](#) (CRC), 1989, acknowledges the role of parents and family in making decisions for children, but places the ultimate responsibility for protecting the rights of a child in the hands of the government.(Article 5) The CRC also established the “best interests of the child” standard in addressing the rights of children.(Article 3) FGM is recognized as a violation of that best interest standard and a violation of children’s rights. The CRC mandates governments to abolish “traditional practices prejudicial to the health of children.” (Article 24 (3)) The [Concluding Observations of the Committee on the Rights of the Child \(CRC\): Togo](#) (1997) explicitly directs governments to enact legislation that will abolish the practice of FGM as it is a violation of the rights of children.

In addition to recognizing that FGM violates these fundamental rights, numerous instruments establish that governments have a duty to prohibit the practice and protect women and girls vulnerable to the practice. This duty is fulfilled by enacting legislation and implementing other methods of social and cultural education. Legislation should be enacted that encompasses these fundamental rights and governmental duties related to the practice of FGM:

- the duty to modify customs that discriminate against women;
- the duty to abolish practices that are harmful to children;
- the duty to ensure health care and access to health information; and
- the duty to ensure a social order in which rights can be realized.

(See: [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), Chapter 3 for full discussion)

Specific human rights instruments

More recently, human rights instruments are explicitly referencing the practice of FGM as an act of violence against women and mandating state parties to prohibit the practice. Some examples are set forth below.

International instruments

- The [Universal Declaration of Human Rights](#), 1948, provides a broad foundation for the protection of women against the practice of FGM. Article 3 states that “Everyone has the right to life, liberty and security of person.” Under Article 5, “No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. Article 7 states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 8 declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Article 12 protects an individual’s privacy while Article 25 addresses motherhood and childhood. More generally, Article 28 states: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”
- Similarly, the [International Covenant on Civil and Political Rights \(ICCPR\)](#) (1966) prohibits discrimination on the basis of sex, and mandates states parties to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” (Article 2) In addition, the ICCPR protects individuals from “torture or cruel, inhuman or degrading treatment” and arbitrary or unlawful interference with his or her privacy. (Articles 7 and 17) The ICCPR states that everyone has the “right to liberty and security of person” and that “[e]very child shall have ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” (Articles 9 and 24)
- The preamble to the [International Covenant on Economic, Social and Cultural Rights](#) (1976) acknowledges that human rights “derive from the inherent dignity of the human person.” Article 3 declares that the state parties must “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” Article 12 protects the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”
- More recently, the [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979, and the [Convention on the Rights of the Child](#) (CRC), 1989, focus on the rights of women and girls and also provide a basis for the elimination of FGM as a human rights violation.
- The [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979 defines discrimination against women as:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” ([Article 1](#))

- Although not explicitly mentioned, the practice of FGM fits within the definition of discrimination against women as set forth in CEDAW. It is a practice exclusively directed towards women and girls with the effect of “nullifying their enjoyment of fundamental rights.” *Female Genital Mutilation: A Guide to Laws and Policies Worldwide* by Anika Rahman and Nahid Toubia. Whatever the common justifications for the practice of FGM, cultural or religious, FGM causes great short-term and long-term physical and mental harm to its victims and perpetuates the fundamental discriminatory belief of the subordinate role of women and girls.

State parties to CEDAW must eliminate this discrimination by undertaking:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women. ([Article 2](#))

In addition, state parties to CEDAW are required to: *“modify the social and cultural patterns of conduct ... with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”* ([Article 5](#))

- Further support for the principle that FGM is a form of gender discrimination pursuant to CEDAW can be found in the [General Recommendation Nos. 14, 19 and 24](#) from the Committee on the Elimination of Discrimination against Women (CEDAW). These recommendations note the severe health and other consequences for women and girls subjected to FGM, identify FGM as a form of violence against women, and recommend that state parties take measures to eliminate the practice of FGM. (See below: [UN Treaty Monitoring Committees](#))
- The [Convention on the Rights of the Child](#) (CRC), (1989), places in the government the ultimate responsibility for ensuring that the fundamental rights of children are recognized and protected. The guiding standard established by the CRC is “the best interests of the child.” (Article 3)

Article 16 protects a child’s right to privacy.

Article 19 requires states parties to “*take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence ...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*” (Article 19(1)) It also requires states parties to create “*social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*” (Article 19(2))

Article 24 requires states to “*take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*” (Article 24(3))

- The country reports of the Committee on the Rights of the Child consistently recognize FGM as a harmful traditional practice that is against the best interests of the child and repeatedly call for its elimination. (See: [Concluding Observations of the Committee on the Rights of the Child: Ethiopia \(1997\)](#), (Para. 6); [Concluding Observations of the Committee on the Rights of the Child: Sudan \(1993\)](#), (Para. 13); [Concluding Observations of the Committee on the Rights of the Child: Togo \(1997\)](#), (Para. 24))

Declarations and Resolutions

- Article 1 of the UN General Assembly [Declaration on the Elimination of Violence Against Women](#), 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 in private life.” (Article 1) Article 2 explicitly identifies FGM as such a form of violence against women. Article 2(a).

- Furthermore, the United Nations General Assembly has repeatedly called for more attention to the practice of FGM and more efforts by states for its elimination and protection of women and girls from the practice. (See: United Nations, [General Assembly Resolutions and Secretary-General Reports on Traditional or Customary Practices Affecting the Health of Women and Girls; Report of the Secretary-General \(Fifty-third Session, 10 September 1998\) A/RES/53/354, paras. 17-18](#)); United Nations, [General Assembly Resolution on Traditional or Customary Practices Affecting the Health of Women and Girls; Report of the Third Committee \(30 January 2002\) A/RES/56/128](#); United Nations, [General Assembly Resolution on Traditional or Customary Practices Affecting the Health of Women and Girls, Report of the Third Committee \(7 February 2000\) A/RES/54/133](#))
- Recently, the [Commission on the Status of Women](#) adopted a resolution entitled [Ending Female Genital Mutilation](#). This resolution recognizes that female genital mutilation is a human rights violation that results in irreparable harm and constitutes a serious threat to the health of women and girls. The resolution sets forth specific multi-level State recommendations in order to eliminate FGM. The resolution calls on States to condemn the practice, enact and enforce legislation prohibiting FGM as well as penalties for violations of prohibitions. In addition, the resolution:

13. Also urges States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs, in particular female genital mutilation, that discriminate against women and girls or have a discriminatory impact on women and girls and to ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles, including the principle of non-discrimination.

15. Calls upon States to develop policies, protocols and rules to ensure the effective implementation of national legislative frameworks on eliminating discrimination and violence against women and girls, in particular female genital mutilation, and to put in place adequate accountability mechanisms at the national and local levels to monitor adherence to and implementation of these legislative frameworks.

- The resolution also emphasizes the need for education and training of families, community and religious leaders, and members of all professions relevant to the protection and empowerment of women and girls, including health-care providers, social workers, police officers, legal and judicial personnel and prosecutors.

Regional instruments

- The [African Charter on Human and People's Rights \(the Banjul Charter\)](#), (1981), generally addresses the protection of the fundamental human rights of women and girls. Articles 4 and 5 recognize the respect for life, integrity of person, and the “right to the respect of the dignity inherent in” every individual. Article 16 ensures the right of every individual “to enjoy the best attainable state of physical and mental health.” Article 18(3) requires the government to “ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.” Article 28 acknowledges the duty to respect and consider others without discrimination.
- The [African Charter on the Rights and Welfare of the Child \(African Charter\)](#) (1990) follows the standard established by the CRC, that the “best interests of the child shall be the primary consideration” by an individual or authority in addressing issues related to children. (Article 4(1)) The Charter protects against discrimination and children’s rights to survival, protection, privacy, and physical, mental, and spiritual health. (Articles 3, 5(2), 10, 14(1))
- Furthermore, the African Charter requires member states of the Organization of African Unity to:

“take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) those customs prejudicial to the health or life of the child; and

(b) those customs and practices discriminatory to the child on the grounds of sex or other status.” Article 21(1).

- The more recent [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (2003) ([The Maputo Protocol](#)) mandates states parties to “...adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.” (Article 4) This Protocol also specifically directs states parties to prohibit and eliminate harmful practices, explicitly including FGM:

Article 5 - Elimination of Harmful Practices

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- *creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;*
- *prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-*

medicalisation of female genital mutilation and all other practices in order to eradicate them;

- *provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting;*
- *protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.” (Article 5)*
- The [Cairo Declaration for the Elimination of FGM](#), 2003, explicitly calls for governments to recognize and protect the human rights of women and girls in accordance with the aforementioned human rights documents and implement legislation to criminalize and prohibit FGM. The Declaration acknowledges that “the prevention and the abandonment of FGM can be achieved only through a comprehensive approach promoting behaviour change, and using legislative measures as a pivotal tool.” Laws against FGM should be “integrated into broader legislation” including “gender equality, protection from all forms of violence against women and children, women’s reproductive health and rights, and children’s rights.” (Para. 1) The declaration also recognizes that the “use of law should be one component of a multi-disciplinary approach to stopping the practice of FGM.” (Para. 2)
- The 1999 [Ouagadougou Declaration of the Regional Workshop on the Fight against Female Genital Mutilation](#) calls for members of the West African Economic and Monetary Union region to serve as a “network for dialogue, harmonization, implementation and follow-up of joint activities to combat FGM.” The Declaration recommends:
 - *The effective implementation of the Addis Ababa Declaration through the adoption of national legislation condemning the practice of FGM;*
 - *The ratification of all United Nations and International Labour Organization conventions and recommendations pertaining to women's rights, particularly the United Nations Convention on the Elimination of All Forms of Discrimination Against Women;*
 - *The creation of national networks of religious and customary leaders as well as networks of traditional and modern communicators with a view of setting up subregional networks;*
 - *The establishment of a mechanism of collaboration with and support to IAC [[Inter-African Committee on Traditional Practices](#)] national committees through groups such as parliamentarians, jurists, media personnel, police forces and health professionals;*
 - *The establishment of special services in charge of controlling the migratory flow of circumcisers;*

- *The creation of a subregional follow-up mechanism in collaboration with IAC national committees within the UEMOA region.*
- The [1998 Banjul Declaration on Violence against Women - Inter-African Committee on Traditional Practices and the Gambia Committee on Traditional Practices Affecting the Health of Women and Children \(GAMCOTRAP\)](#) strongly condemns the practice of FGM and the misuse of religious argument to promote the practice. In addition to seeking legislation “against the continuation of the practice of FGM, stipulating penalties for offenders,” the Declaration recommends setting up networks of religious and scholarly leaders to campaign against harmful traditional practices, establishing family tribunals to settle disputes, and reviewing family laws “in light of Christian and Islamic principles and human rights.”
- The [Council of Europe Resolution 1247 on Female Genital Mutilation](#) (2001) calls on member states to enact “specific legislation prohibiting genital mutilation and declaring genital mutilation to be a violation of human rights and bodily integrity” and to prosecute the perpetrators “including family members and health personnel, on criminal charges of violence leading to mutilation, including cases where such mutilation is committed abroad.” The Resolution also calls for member states to be more flexible in granting asylum to mothers and children who fear being subjected to FGM, and to allow victims to prosecute perpetrators of the practice upon reaching the age of majority.
- The [2001 European Parliament Resolution A5-0285/2001 on Female Genital Mutilation](#) condemns FGM as a “violation of fundamental human rights” and urges Member States to enact legislation specifically banning the practice and pursue educational programs and publicity campaigns highlighting the harmful nature of the practice. The Resolution also:
 - *Calls on the Council, Commission and Member States to carry out an in-depth enquiry to ascertain the extent of this phenomenon in the Member States.*
 - *Calls on the Commission to draw up a complete strategy in order to eliminate the practice of female genital mutilation in the European Union, which should go beyond merely denouncing these acts and establish both legal and administrative and also preventative, educational and social mechanisms to enable women who are or are likely to be victims to obtain real protection.*

Member states are encouraged to “regard any form of female genital mutilation as a specific crime,” regardless of whether a woman has given consent, and regardless of whether the offence was committed extraterritorially. The Resolution also encourages preventative measures, including:

- *Legislative measures to allow judges or public prosecutors to adopt precautionary and preventative measures if they are aware of cases of women or girls at risk of being mutilated.*

- *Administrative provisions concerning health centres and the medical profession, educational centres and social workers, as well as codes of conduct, decrees and ethical codes, to ensure that health professionals, social workers, teachers and educators report cases of which they are aware...of people...who need protection.*
- *A preventative strategy of social action aimed at protecting minors without stigmatizing immigrant communities.*
- The [European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\)](#) condemns any form or degree of FGM as “an act of violence against women which constitutes a violation of their fundamental rights, particularly the right to personal integrity and physical and mental health, and their sexual and reproductive health” and states that “such violations can under no circumstances be justified by respect for cultural traditions of various kinds or initiation ceremonies.

UN treaty monitoring committees

The following UN treaty monitoring committees have issued statements interpreting human rights instruments to recognize FGM as a violation of human rights and a form of violence against women. They also mandate the elimination of FGM:

- [Committee on the Elimination of Discrimination against Women \(CEDAW\), General Recommendation No. 14](#) (9th Session, 1990). Recommends that States parties “*take appropriate and effective measures with a view to eradicating the practice of female circumcision*” and provides various examples of such measures.
- [Committee on the Elimination of Discrimination against Women \(CEDAW\), General Recommendation No. 19](#) (11th Session, 1992).
- [Committee on the Elimination of Discrimination against Women \(CEDAW\), General Recommendation No. 24](#) (20th Session, 1999).
- [Concluding Observations of the Committee on the Rights of the Child \(CRC\): Togo](#) 1997, Para 24.
- [Concluding Observations of the Committee on the Rights of the Child \(CRC\): Ethiopia \(1997\)](#), Para. 6.
- [Concluding Observations of the Committee on the Rights of the Child \(CRC\): Sudan](#) (1993), Para. 13.
- International Covenant on Civil and Political Rights: [Concluding Observations of the Human Rights Committee: the Sudan](#) (2007), Para. 15.
- Human Rights Committee, [General Comment No. 28: Equality of rights between men and women \(article 3\)](#), Para. 11.

Conference documents

- Both the [Programme of Action of the International Conference on Population and Development](#) in Cairo, Egypt, and the [Beijing Declaration and Platform for Action: Fourth World Conference on Women](#) (1995) specifically advocate for countries to enact policy, legislation and action to end the practice of FGM. (See: [Beijing Declaration and Platform for Action: Fourth World Conference on Women](#), Paras. 39, 107, 113, 124, 232, 277; [Programme of Action of the International Conference on Population and Development in Cairo, Egypt](#), Paras. 4.22, 5.5, 7.6, 7.40)
- The [Vienna Declaration and Programme of Action of the World Conference on Human Rights](#) (1993) calls for governments to take action to eliminate the practice of FGM despite its firm roots in culture and religion. The Declaration calls for the “eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.” Section II(B)(3)(Para 38). In addition, the [Vienna Declaration and Programme of Action of the World Conference on Human Rights](#) “urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.” (Para. 49)
- Similarly, the [Beijing Declaration and the Platform for Action: Fourth World Conference on Women](#), states: “Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated.” (Para. 224)

General principles for legislation on female genital mutilation

Core elements for legislation on female genital mutilation

The following are necessary elements for drafting legislation on FGM. Each element is discussed in detail below:

- A national plan and strategy;
- A legislative preamble that takes a stand against violence against women;
- A clear and precise definition of FGM;
- Criminalization of the act of FGM;
- Criminalization of aiding and abetting the act of FGM;
- A duty to report for all persons who become aware of the occurrence or the imminent occurrence of FGM;
- A framework of child protection legislation which is based upon the best interests of the child;
- A fully developed order for protection for actual or potential victims of FGM;
- A clear statement of victims’ rights and adequate responses to victims’ needs;
- A clear statement of the roles and responsibilities of government and community actors; and
- A clear statement of broader coordinated policies to include a coordinated community response, public education and trainings.

National plan and strategy

- Legislation should require that the state draft and implement a national plan and strategy to eliminate FGM within the next generation, or the next ten years.
- The national action plan and strategy should reflect a proactive coordinated response providing a framework for all agencies in the state, including legal, health, and community.
- The national plan or strategy should emphasize accurate information that will be presented in all applicable local languages and will also be presented to the non-literate.
- Legislation should require that child protection services are incorporated into the national plan and strategy.
- Legislation should require adequate funding to implement the national plan and strategy.

Promising Practices: Norway's National and International Action Plans

[Norway's Action Plan for Combating Female Genital Mutilation – Norwegian Ministries, 2008-2011](#)

Norway first passed a law against FGM in 1995 and issued its first action plan against FGM in 2000. Norway's current 2008-2011 [Action Plan for Combating Female Genital Mutilation](#) represents a government-issued national action plan and strategy. A collaborative effort between seven ministries, the Action Plan recognizes the need for a coordinated response by national, regional and local authorities, affected groups and relevant religious communities. The Action Plan creates a national advisory group to facilitate this cooperation, identifies responsibilities of respective ministries for various sections of the Action Plan, and places the responsibility for coordinating efforts to combat FGM with the Ministry of Children and Equality. The Action Plan is divided into six categories of objectives, which, in turn, delineate further steps and identify responsible ministries:

- Effective enforcement of legislation;
- Competence-building and the transfer of knowledge;
- Prevention and opinion-building;
- Available health services;
- Extra effort at holiday times; and
- Stronger international efforts.

[The Norwegian Government's International Action Plan for Combating Female Genital Mutilation, 2003](#)

In addition to their national action plan, Norway has also had an international action plan since 2003 outlining international efforts to combat FGM both in Norway and abroad. Using human rights as the entry point, the plan focuses on three main areas of effort: 1) the prevention of FGM and the promotion of social mobilization against the practice; 2) the treatment and rehabilitation of both girls and women who have undergone FGM; and 3) competence building at all levels in the effort to combat FGM.

Examples:

European Network for the Prevention and Eradication of Harmful Traditional Practices

The [European Network for the Prevention and Eradication of Harmful Traditional Practices](#) coordinated a project involving the governments and civil societies of 15 European countries. As a result of the project, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom each launched a new or updated national action plan to address the issue of FGM. Ireland's National Plan of Action is discussed below. (See: [Hankkeen liitetiedot](#), Vantaan Nicehearts ry, Naisresurssikeskus Pihlaja)

Ireland's National Plan of Action to Address Female Genital Mutilation, 2008

Ireland's National Plan of Action is an example of an interagency non-governmental action plan directed to create coordinated strategy and collaboration across agencies to combat the practice of FGM. It was drafted by a national steering committee comprised of mostly Irish Aid and Irish development non-governmental organizations. The Plan of Action recognized that Ireland lacked a coordinated strategy or interagency working group to address FGM. As a result, government and non-government agencies did not communicate and their efforts to address FGM are not effectively implemented. Following examples of interagency cooperation on FGM from countries such as Norway and Sweden, the Action Plan sets forth a plan to join policies from various agencies with an aim toward concerted collaborative efforts to combat FGM. The goals of the Plan of Action are to: 1) prevent the practice of FGM in Ireland; 2) provide quality and appropriate health care for women and girls who have undergone FGM; and 3) contribute to the worldwide campaign to end FGM. The Plan of Action sets forth five strategy headings from which action flows in a combination of "top-down policy and legislative measures with bottom-up community development approaches to maximize impact": Legal; Asylum; Health; Community; and Development Aid.

Ratify international and regional human rights instruments

- As part of any national plan and strategy to eliminate FGM, governments should ratify international and regional human rights treaties that are relevant to FGM and call for an end to the practice.
- Ratification of such treaties, however, should be done with no reservations which undermine the signing state's obligation to promote women's rights or eliminate the practice of FGM. For example, reservations to the Women's Convention or the Convention on the Rights of the Child which state that customary law or principles of Islam have precedence over treaty articles that prohibit discrimination against women or other conflicting directives of the Convention, undermine the very intent of the treaty itself.

- Clear government commitment to human rights, as evidenced by ratification without reservations of human rights treaties, provides impetus for social movements necessary for social change.
- After ratification, existing and future legislation must be amended or written to be consistent with the ratified human rights instruments. Ratification of such treaties will require the drafting, implementation, and monitoring of new laws and policies to protect women and girls from FGM and eliminate the practice.

Ensure constitutional protections

The national strategy should also ensure that the national constitution upholds the rights of women and girls to be free from FGM. The constitution is likely the highest legal authority, and legislation and government action generally must conform to the norms and standards set forth in it. As such, a constitution should be drafted to include measures to:

- ensure the equality of women and girls;
- protect the rights of children explicitly;
- establish supremacy of constitutional protections and other formal law over customary or religious laws; and
- explicitly prohibit the harmful practices, including FGM.

Examples of constitutional protections

Ethiopia - While the Ethiopian Constitution does not explicitly refer to FGM, it establishes the supremacy of constitutional provisions and protects women and girls from “harmful customs”, including by interpretation FGM.

[Article 9 Supremacy of the Constitution](#)

- (1) *The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.*
- (2) *All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.*
- (3) *It is prohibited to assume state power in any manner other than that provided under the Constitution.*
- (4) *All international agreements ratified by Ethiopia are an integral part of the law of the land. (Emphasis added).*

[Article 35 Rights of Women](#)

- (1) *Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.*
- (2) *Women have equal rights with men in marriage as prescribed by this Constitution.*

- (3) *The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.*
- (4) *The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.*
- (5) (a) *Women have the right to maternity leave with full pay. The duration of maternity leave shall be determined by law taking into account the nature of the work, the health of the mother and the well-being of the child and family.*
 (b) *Maternity leave may, in accordance with the provisions of law, include prenatal leave with full pay.*
- (6) *Women have the right to full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women.*
- (7) *Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.*
- (8) *Women shall have a right to equality in employment, promotion, pay, and the transfer of pension entitlements.*
- (9) *To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity. (Emphasis added.)*

Ghana - [Constitution of Ghana](#) – Similarly, FGM is considered a harmful practice prohibited under the Constitution, which is explicitly given supremacy over other formal or informal laws.

[Chapter 1, Paragraph 1\(2\)](#) - *The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void.*

[Chapter 5, Paragraph 26](#) –

- (1) *Every person is entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution.*
- (2) *All customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.*

[Chapter 6, Paragraph 39](#) -

- (1) *Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through*

formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

(2) The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular that traditional practices which are injurious to the health and well-being of the person of the person are abolished.

(3) The State shall foster the development of Ghanaian languages and pride in Ghanaian culture.

(4) The State shall endeavour to preserve and protect places of historical interest and artifacts. (Emphasis added.)

Drafting the legislative preamble for a law against fgm

The legislative preamble sets the stage for the entire piece of legislation. The following elements are important to a strong and inclusive legislative preamble:

- A definition of discrimination against women and girls as a restriction based upon sex which impairs the rights of women and girls. (See: [United Nations Handbook for legislation on violence against women](#), 3.1.1 (hereinafter UN Handbook))
- A statement that acknowledges that the root cause of violence against women is the subordinate status of women in society. (See: [General Recommendation 19](#), Paragraph 11; [UN Secretary-General's study on violence against women](#), para. 30; [Other Causes and Complicating Factors](#), StopVAW, The Advocates for Human Rights; and [The International Legal Framework](#), StopVAW, The Advocates for Human Rights)
- A statement that legislation should be comprehensive and criminalize all forms of violence against women. (See: [UN Handbook](#), 3.1.2.)
- A statement that the law will protect all women and girls. See: [UN Handbook](#) 3.1.3. For example, one of the first articles of the [Maria de Penha Law \(2006\) of Brazil](#) (hereinafter law of Brazil) states that:

“All women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement.” (Article 2)
- A statement that all forms of FGM are forms of violence against women and girls.
- A statement that FGM is a form of child abuse.
- A statement that no customary or religious justifications shall be considered to justify FGM in any form. (See: [UN Handbook](#) 3.1.5; Convention on the Rights of the Child)
- A statement that the state has the duty to prevent FGM, to investigate and prosecute cases of FGM, to investigate cases of imminent FGM, to protect potential victims, to punish perpetrators of FGM, and to give support to survivors of FGM.

Translation

- Legislation should provide that this law shall be translated into all local languages.
- Legislation should provide for educational materials on this law to be created for non-literate people.
- Legislation should also provide that during investigations or court cases licensed interpreters and cultural mediators are present to translate. Such interpreters or mediators should receive training on the issues related to FGM and should undergo questioning from the court to determine they are eligible to provide accurate translation.

Statistical compilation on FGM

Legislation should provide that a state agency is mandated to keep statistics on how many women and girls have undergone FGM or are at risk of undergoing FGM so that the issue will not be marginalized and to promote law and policy implementation. Legislation should mandate funding to obtain statistics over many years so that changes may be noted and analyzed.

[European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\) P6_TA\(2009\)0161:](#)

[The European Parliament] [c]alls on the Member States to quantify the number of women who have undergone FGM or are at risk in individual countries, taking into account the fact that there are as yet no figures available for many countries, which likewise do not have harmonized data-gathering systems.

Funding

Legislation should mandate funding to address the necessary aspects of creating change to stop the practice of FGM. This includes funding needed to implement the law, change social norms and influence individual beliefs and expectations. Funding to that end should be mandated for the child protection system, changes to the criminal justice system, to provide training and education, and to enable data collection on aspects relating to the new laws.

Time frame to enforce laws

The time between the enactment and enforcement of a new FGM law must be carefully calculated so that amendments and regulations which are necessary to the enforcement of the new law will be enacted and promulgated speedily.

Amendments to laws

Drafters should anticipate and allow for amendments to the law on FGM as unintended consequences and unforeseen manifestations of the practice of female genital mutilation occur.

Removal of conflicting provisions

Because the elimination of FGM involves extensive social change, drafters should review and reform other laws that prevent the equality of women and girls. Legislation should require that laws, in any area, that conflict with the underlying goal of women's equality, safety and education, be removed or amended.

Drafters should specifically review conflicting customary and religious laws or situations of dual legal systems where civil law operates adjacent to customary or religious laws which often govern family relations and property rights and may discriminate against women.

To this end, drafters should develop and review laws in other areas to ensure they reflect a commitment to establishing the equality of women and girls. Examples include:

- Development of uniform civil laws relating to family and property law that have clear supremacy to conflicting customary or religious law.
- Development of laws that prevent discrimination against minorities.
- Development of immigration laws that protect and prioritize the rights of women and girls.
- Development of laws that protect the advancement of women in employment.
- Development of laws that ensure the right to health and education for women and girls.

Clear and precise definition of female genital mutilation

Classifications

Legislation should state that FGM is an act of physical violence against the bodily integrity of a person. Legislation should clearly articulate the types of FGM including:

- Type I: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy).
- Type II: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision).
- Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation and re-infibulation).
- Type IV: All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping, cauterization and inserting harmful substances into the vagina.

(See: [Eliminating Female Genital Mutilation: An Interagency Statement](#), by OCHCR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, published by WHO, 2008)

Criminalization

- Drafters should develop a criminal law explicitly prohibiting the practice of all forms of FGM. This law should be implemented in conjunction with community education and advocacy programs to create the broader changes to social norms and individual beliefs in which the practice of FGM is so firmly entrenched. Laws criminalizing the practice of FGM, when used with other forms of advocacy and broader governmental strategies to change social norms, can help influence social change. Political and community support for the laws as well as appropriate enforcement and implementation, however, is vital to the effectiveness of any law.
- While legislation criminalizing FGM should, ideally, specifically prohibit the practice of FGM, it is possible to address the practice with criminal law provisions that include FGM. France has had success prosecuting cases of FGM under general provisions in the [French Penal Code](#), which provides penalties for violent acts that result in a “mutilation” or “permanent disability.” These penalties are increased for acts committed against a minor under 15 years of age. Use of a general criminal provision to prosecute cases of FGM may work in France because the government has made an effort to educate the public about the serious criminal nature of the practice. However, in other countries where FGM has traditionally been allowed, it may be ineffective to suddenly begin to use general criminal law provisions to start prosecuting behavior that has otherwise been tolerated. Enacting new legislation that explicitly prohibits the practice of FGM accompanied by a public education campaign will more effectively inform people of the criminal consequences of the practice and more clearly define the criminal behavior itself.
- Criminal legislation in countries where FGM is predominately practiced by an immigrant group must be accompanied by education and empowerment programs to avoid harassment or further ostracizing that group from the larger community. Leaders and community members of those immigrant groups should be consulted and fully involved in such educational programs as well as in the implementation of legislation drafted against FGM. In addition, drafters should define the crime of FGM in a way that avoids subjecting individuals convicted of the practice to deportation.

Clear definition of crime and liability

- Legislation should state that any person who violates or attempts to violate the physical integrity of the female genitalia shall be subject to criminal penalties.
- Legislation should specifically state that re-infibulation, “re-closing” a woman after child birth to her pre-delivery infibulated state, is illegal and should not be performed by health professionals or any other practitioner.
- When drafting laws that explicitly criminalize FGM, drafters should clearly define the criminal activity (see Classifications above) as well who will be subject to

liability, and explicitly include parents and family members of victims among those subject to criminal liability. Certain countries merely state that the practice of FGM is prohibited, but because FGM takes different forms (See Classifications above), it is often unclear what exactly is deemed a crime and who is liable.

Examples of Criminal Code definitions:

- The Criminal Code of Ghana ([sec. 69A](#)) is specific in its criminalization of FGM:
(1) Whoever excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person commits an offence and shall be guilty of a second degree felony and liable on conviction to imprisonment of not less than three years.
(2) For the purposes of this section 'excise' means to remove the prepuce, the clitoris and all or part of the labia minora; 'infibulate' includes excision and the additional removal of the labia majora.
- [Burkina Faso Penal Code](#), Art. 380:
Anyone who harms the female genital organs by total ablation, excision, infibulation, desensitization or any other means shall be punishable by six months to three years' imprisonment and a fine ranging from CFA francs 150,000 to 900,000 or by one of these two punishments only. . . .
- [Penal Code of Senegal \(27.02.1999\), Art. 299 bis](#):
Anyone who damages or attempts to damage the integrity of the female genital organ by total or partial removal or one or more of its elements, by infibulation, desensitisation or any other means, shall be punishable by imprisonment ranging from six months to five years. The maximum punishment shall apply when these sexual mutilations have been practised or facilitated by a member of the medical or paramedical profession. When they have caused death, the penalty of hard labour for life shall always be applied. The same penalties shall apply to any person who, through gifts, promises, influence, threat, intimidation, abuse of authority or power, caused such genital mutilations to happen or instructs others to practise them.
- [Canadian Criminal Code, sec. 268](#):
Aggravated assault
268.(1) Everyone commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.
Punishment
(2) Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Excision

(3) For greater certainty, in this section, “wounds” or “maims” includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where

(a) a surgical procedure is performed, by a person duly qualified by provincial law to practise medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or

(b) the person is at least eighteen years of age and there is no resulting bodily harm.

Consent

(4) For the purposes of this section . . . , no consent to the excision, infibulation or mutilation, in whole or in part, of the labia majora, labia minora or clitoris of a person is valid, except in the cases described in paragraphs (3)(a) and (b).

- [United Kingdom: Female Genital Mutilation Act 2003:](#)

1 Offence of female genital mutilation

(1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris.

(2) But no offence is committed by an approved person who performs—

(a) a surgical operation on a girl which is necessary for her physical or mental health, or

(b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.

(3) The following are approved persons—

(a) in relation to an operation falling within subsection (2)(a), a registered medical practitioner,

(b) in relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(4) There is also no offence committed by a person who—

(a) performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and

(b) in relation to such an operation exercises functions corresponding to those of an approved person.

(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

- [California Penal Code, sec. 273.4\(b\):](#)

'Female genital mutilation' means the excision or infibulation of the labia majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.

Punishment of parents, family members and others

Legislation should provide for criminal liability of parents, family members and others who:

- Perform FGM;
- Instruct or incite others to subject a woman or girl to FGM;
- Fail to report the risk or occurrence of FGM.

(See Aiding and Abetting and Duty to Report section below.)

- [United States, Georgia Criminal Code: § 16-5-27. Female genital mutilation](#)

(a) Any person:

(1) Who knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under 18 years of age;

(2) Who is a parent, guardian, or has immediate custody or control of a female under 18 years of age and knowingly consents to or permits the circumcision, excision, or infibulation, in whole or in part, of the labia majora, labia minora, or clitoris of such female; or

(3) Who knowingly removes or causes or permits the removal of a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female shall be guilty of female genital mutilation.

(b) A person convicted of female genital mutilation shall be punished by imprisonment for not less than five nor more than 20 years.

(c) This Code section shall not apply to procedures performed by or under the direction of a physician, a registered professional nurse, a certified nurse midwife, or a licensed practical nurse licensed pursuant to Chapter 34 or 26, respectively, of Title 43 when necessary to preserve the physical health of the female. This Code section shall also not apply to any autopsy or limited dissection as defined by Code Section 45-16-21 which is conducted in accordance with Article 2 of Chapter 16 of Title 45.

(d) Consent of the female under 18 years of age or the parent, guardian, or custodian of the female under 18 years of age shall not be a defense to the offense of female genital mutilation. Religion, ritual, custom, or standard practice shall not be a defense to the offense of female genital mutilation.

(e) The statutory privileges provided by Chapter 9 of Title 24 shall not apply to proceedings in which one of the parties to the privilege is charged with a crime against a female under 18 years of age, but such person shall be compellable to give evidence only on the specific act for which the defendant is charged.

(Emphasis added).

- [Penal Code of Senegal \(27.02.1999\), Art. 299 bis](#):
Anyone who damages or attempts to damage the integrity of the female genital organ by total or partial removal or one or more of its elements, by infibulation, desentisation or any other means, shall be punishable by imprisonment ranging from six months to five years. The maximum punishment shall apply when these sexual mutilations have been practised or facilitated by a member of the medical or paramedical profession. When they have caused death, the penalty of hard labour for life shall always be applied. The same penalties shall apply to any person who, through gifts, promises, influence, threat, intimidation, abuse of authority or power, caused such genital mutilations to happen or instructs others to practise them. (Emphasis Added).
- Several countries or states have laws that expand liability to “any” individual. Such language could be used to hold parents and family members potentially criminally liable for the practice of FGM. See the following examples:
 - [Burkina Faso Penal Code, Art. 380](#);
 - [Canadian Criminal Code, sec. 268](#);
 - Togo: [Act No. 98-016 of November 17, 1998 Prohibiting Female Genital Mutilation](#) (link to French version only);
 - United Kingdom: [Female Genital Mutilation Act 2003](#);
 - [California Penal Code, Section 273a\(a\)](#) and [Section 273.4](#); and
 - The Republic of Benin - [Law No. 2003-3 on Repression of the Practice of Female Genital Mutilation \(FGM\)](#).
- However, some countries in their sentencing policies and practice focus on maintaining the “the best interests of the child” as the guiding principle when assessing criminal liability for parents who procure FGM for their daughters. Imposing long prison sentences may cause a greater burden for the child. Other penalties may be sought for parents in those cases. France, for example, has prosecuted parents for obtaining FGM for their daughters, but generally criminal penalties have not been assigned. Instead, the most severe penalties have been imposed on the practitioner while parents received a lighter or suspended sentence and serve little or no jail time.

Examples of punishment of parents

- **France:** The French criminal court (Cour d’Assises) has prosecuted several cases of FGM since 1991 under [Article 222](#). In 1999, France prosecuted a Malian woman named Hawa Greou for performing FGM on 48 girls. The court also prosecuted 26 parents who brought their daughters to Hawa Greou for the procedure. Greou received a prison term of eight years, and the parents received terms ranging from a three-year suspended sentence to two years in prison. (BBC, World: [Europe: Woman Jailed for 48 Circumcisions](#), 17 February 1999)

- **Denmark:** In 2009, a Danish County Court charged the parents of three girls under section [245A](#) of the Danish Criminal Code. The parents were prosecuted for bringing two daughters to Sudan for female genital mutilation and for intending to bring a third daughter for female genital mutilation.” The father was acquitted but the mother was convicted and sentenced to two years in prison. The court, however, suspended 1 year and 6 months of the two year sentence with a period of three years probation and required the mother to pay compensation to each of the three daughters. (Response of the Government of Denmark to questionnaire on Beijing +15 (2009), [First Case Regarding Female Genital Mutilation](#), United Nations Secretary-General’s Database on Violence against Women)

Sentencing provisions

Legislation should provide for penalties of prison time and fines. Legislation should provide that sentencing guidelines reflect the gravity of the offense.

- United Kingdom: [Female Genital Mutilation Act 2003](#), sec. 5.

Penalties for offenses:

A person guilty of an offence under this Act is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both),

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

- United States, California:

The California Criminal Code makes it a felony to, under conditions likely to cause harm, willfully cause or allow the injury, pain or mental suffering of a child. If the harm is caused by FGM, however, the Code specifically states that the felony level penalties provided for will be increased by one year.

- [California Penal Code, Section 273a\(a\)](#):

(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

- [California Penal Code, Section 273.4](#).

(a) If the act constituting a felony violation of subdivision (a) of Section 273a was female genital mutilation, as defined in subdivision (b), the defendant shall be punished by an additional term of imprisonment in the

state prison for one year, in addition and consecutive to the punishment prescribed by Section 273a.

(b) "Female genital mutilation" means the excision or infibulation of the labia majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.

Enhanced penalties

Legislation should provide that if a victim dies due to FGM, the perpetrator should be prosecuted under the murder statutes of the penal code. The specific law on FGM should provide a term of imprisonment and fine which is no less severe than what is provided under the murder statutes of the general penal code.

The laws of Burkina Faso, Senegal, Togo and Benin provide for increased penalties when a victim dies due to FGM.

- [Burkina Faso Penal Code, Art. 380](#):
Anyone who harms the female genital organs by total ablation, excision, infibulation, desensitization or any other means shall be punishable by six months to three years' imprisonment and a fine ranging from CFA francs 150,000 to 900,000 or by one of these two punishments only. Should [the FGM] result in death, the punishment shall be five to ten years' imprisonment. (Emphasis Added).
- [Penal Code of Senegal \(27.02.1999\), Art. 299 bis](#):
Anyone who damages or attempts to damage the integrity of the female genital organ by total or partial removal or one or more of its elements, by infibulation, desensitisation or any other means, shall be punishable by imprisonment ranging from six months to five years. The maximum punishment shall apply when these sexual mutilations have been practised or facilitated by a member of the medical or paramedical profession. When they have caused death, the penalty of hard labour for life shall always be applied. The same penalties shall apply to any person who, through gifts, promises, influence, threat, intimidation, abuse of authority or power, caused such genital mutilations to happen or instructs others to practise them. (Emphasis Added).
- [Togo: Act No. 98-016 of November 17, 1998 Prohibiting Female Genital Mutilation](#) (link to French version only – below is rough translation):

Penalties

Article 3. Anyone who with traditional or modern methods has promoted or practiced female genital mutilation or has participated in it is guilty of assault on the person of the circumcised.

Article 4. Any person who is guilty of assault within the meaning of Article 3 shall be punished by two months to five years imprisonment and a fine of 100,000 to 1,000,000 francs, or one of these two penalties. The penalty will be doubled for repeat offenders.

Article 5. If mutilation caused the death of the victim, the guilty will be punished with 5 to 10 years imprisonment. (Emphasis Added).

- The Republic of Benin - [Law No. 2003-3 on Repression of the Practice of Female Genital Mutilation \(FGM\)](#):

Article 4: Any person who has performed a genital mutilation of any kind on a person of the female gender is liable to imprisonment for a term of six months to three years and to a fine of one hundred thousand to two million francs.

Article 5: When genital mutilation is performed on a minor under the age of 18, the perpetrator is liable to imprisonment for a term of three to five years and a fine not exceeding three million francs.

Article 6: If a victim dies, the offender is liable to five to twenty years of forced labour and to a fine of three million to six million francs.

BUT NOTE: The law of Benin provides a less severe penalty than the maximum penalty for murder, which is the death penalty. This may be the case for many countries in which FGM is prevalent; however, we do not advocate for the death penalty, so its existence should be taken into account when providing enhanced sentences for FGM. With that in mind, sentences should be reflective of the severity of the crime and, if FGM results in death, sentences should be enhanced.

Prohibition of medicalization

- Legislation should prohibit the medicalization of FGM in any form.
- Legislation should explicitly state that there is no medical benefit to the practice of FGM and prohibit medical professionals from conducting any form of FGM.
- Legislation should provide that if the procedure is performed by a person with a medical license or certificate, the term of imprisonment shall be increased and the practitioner shall be prohibited from practicing his or her profession for a period of time.
- Legislation should explicitly prohibit the medical sector from re-infibulation or “re-closing” a woman after child birth to her pre-delivery infibulated state.
- Legislation should require that health-care providers be trained on the harmful consequences of FGM and that performing FGM will result in criminal and civil liability. Guidelines and education should be included in health-care provider’s training curriculum.
- Ministry of Health and professional regulatory bodies should issue policy statements against the medicalization of any form of FGM, including re-infibulation.
- Professional organizations should adopt and disseminate clear standards condemning and prohibiting the practice of any type of FGM. Such standards should be accompanied with strict sanctions for violations.

See: [Global strategy to stop health-care providers from performing genital mutilation.](#)

- For example, the [European Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\)](#), Para 25:

Urges firm rejection of pricking of the clitoris and medicalisation in any form, which are being proposed as a halfway house between circumcision and respect for traditions serving to define identity and which would merely lead to the practice of FGM being justified and accepted on EU territory; reiterates the absolute and strong condemnation of FGM, as there is no reason—social, economic, ethnic, health-related or other—that could justify it.

In addition, both Burkina Faso and Senegal increase penalties for medical professionals who practice FGM.

- [Burkina Faso Penal Code, Art. 381](#):

The maximum punishment shall be meted out if the guilty party is a member of the medical or paramedical profession. Moreover, he or she may be disbarred from practice by the courts for up to five years.

- [Penal Code of Senegal \(27.02.1999\), Art. 299 bis](#):

... The maximum punishment shall apply when [the] sexual mutilations have been practised or facilitated by a member of the medical or paramedical profession....

Criminalization of aiding and abetting the performance of fgm

Legislation should provide that accomplices in the act of FGM shall be punished in the same manner as the practitioner of FGM. Legislation should define “accomplice” in the statute, and include in this definition those who bring a girl or woman to the practitioner as well as those who request the procedure, assist, advise, or procure support for anybody to carry out the procedure. Legislation should clearly state, however, that a victim herself cannot be identified as an accomplice. (See *Punishment of Parents and Family Members* section above).

- The Republic of Benin - [Law No. 2003-3 on Repression of the Practice of Female Genital Mutilation \(FGM\)](#), Article 7:

Any person who has helped, assisted, or requested the services of an FGM practitioner, or given him/her instructions or the means to perform a genital mutilation, will be considered an accomplice and is liable to the same sentence as the main perpetrator of the act.

- United Kingdom: [Female Genital Mutilation Act 2003](#), Sec. 2:

A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.

- [European Parliament Resolution on female genital mutilation \(2001/2035\(INI\)\), Para. AA, 11:](#)
The European Parliament . . . [c]alls on the Member States . . . to regard any form of female genital mutilation as a specific crime, irrespective of whether or not the woman concerned has given any form of consent, and to punish anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or girl.
- The European [Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\), Para 28](#) calls on the Member states to:
 - *regard any form of FGM as a crime, irrespective of whether or not the woman concerned has given any form of consent, and to punish anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or girl,*
 - *pursue, prosecute and punish any resident who has committed the crime of FGM, even if the offence was committed outside their borders (extraterritoriality),*
 - *adopt legislative measures to allow judges or public prosecutors to take precautionary and preventative measures if they are aware of cases of women or girls at risk of being mutilated; . . .*
- [Penal Code of Senegal \(27.02.1999\), Art. 299 bis:](#)
...The same penalties shall apply to any person who, through gifts, promises, influence, threat, intimidation, abuse of authority or power, caused such genital mutilations to happen or instructs others to practise them....

Duty to report

- Legislation should provide that persons who become aware of the occurrence of FGM shall be required to report the crime to the prosecutor of the region wherein the crime occurred.
- Legislation should state that a person with a reasonable fear that FGM will be practiced upon an individual has the duty to report to the local child protection agency. If there is no local child protection agency, a person with a reasonable fear that FGM will be practiced upon an individual has the duty to report to the police. Reasonable fear must be defined in a way that is not based solely on a family's ethnic origin. Legislation should provide guidelines on what factual information can form the basis of a suspicion that would trigger a duty to report. Special guidelines should be developed for health care providers, social workers, and teachers. (See [The FGM Legislation Implemented: Experiences from Sweden](#))
- Legislation should provide that a hotline be established where perpetrators may be reported, or where people, including potential victims, can report those who have the intent to break the law. (See provision on obtaining an order for protection, below.)

- Legislation should include health centers, social service organizations and educators in this duty to report.

For example:

- [European Parliament Resolution on Female Genital Mutilation \(2001/2035\(INI\)\), Para. AA, 11:](#)

The European Parliament...[c]alls on the Member States...to adopt administrative provisions concerning health centres and the medical profession, educational centres and social workers, as well as codes of conduct, decrees and ethical codes, to ensure that health professionals, social workers, teachers and educators report cases of which they are aware or instances of people at risk who need protection and, furthermore, carry out simultaneously the task of education and awareness-raising among families. This would not constitute a violation of professional secrecy.

- [European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\):](#)

The European Parliament ...[c]alls on Member States to make it compulsory for general practitioners, doctors and health clinic teams to report FGM to health authorities and/or to the police.

- [Burkina Faso Penal Code](#), Art. 382:

Any person who is aware of acts as defined by Article 380 and who fails to notify the competent authorities shall be punishable by a fine ranging from CFA francs 50,000 to 100,000.

- Togo: [Act No. 98-016 of November 17, 1998 Prohibiting Female Genital Mutilation](#) (link to French version only – below is rough translation):

One who, having knowledge of an excision already planned, attempted or performed, whereas one could think that the culprits or one of them would perform new female genital mutilations which a denunciation could prevent, did not immediately inform the public authorities, will be punished with one month to one year imprisonment or a fine from 20,000 to 500,000 francs.

- The Republic of Benin - [Law No. 2003-3 on Repression of the Practice of Female Genital Mutilation \(FGM\)](#), Articles 9 and 10:

Article 9: Any person who, having been informed that a female genital mutilation was being planned, did nothing to prevent the act will be prosecuted for failure to render assistance and will be sentenced in accordance with the relevant provisions of the criminal code.

Any person who is aware of an act of female genital mutilation is required to report the fact immediately to the nearest State prosecutor or police criminal investigation department for legal purposes. Failure to report is punishable by a fine of fifty thousand to one hundred thousand francs.

Article 10: Both public and private health services are required to receive victims of female genital mutilations and to provide them with the appropriate medical attention.

They shall inform the nearest State prosecutor or police criminal investigation department for legal purposes.

Promising Practice: Norway - Duty to Report

Female Genital Mutilation is prohibited in Norway. ([Act Relating to Prohibition of Female Genital Mutilation](#), Sections 1 and 2). This law extends to circumstances when FGM is practiced outside of the country. Anyone can report a suspicion of violence against a child, but any concern that a child may be or has already been subjected to FGM triggers a duty to report for certain professionals. In fact, certain professional practitioners and employees can incur liability for failure to attempt to prevent FGM. Specifically, according to Section 6-4 of The Child Welfare Act, notwithstanding the duty of confidentiality, the public authorities have an obligation to inform the child welfare services if there is reason to believe that the child is subject to severe neglect or “deficit of parental care.” FGM is considered gross neglect, and triggers the duty to report. Persons subject to professional secrecy, such as doctors, nurses and psychologists, also have the same obligation to report such information. This duty to report is recognized and highlighted in Norway’s [Action Plan for Combating Female Genital Mutilation](#), 2008-2011.

Norway - [Child Welfare Act/Act Relating to Children Welfare Services, Section 6–4, Para 2 & 3](#)

Notwithstanding the duty of secrecy, public authorities shall on their own initiative disclose information to the municipal child welfare service when there is reason to believe that a child is being mistreated at home or is subjected to other serious deficit of parental care, cf. sections 4–10, 4–11 and 4–12, or when a child has shown persistent, serious behavioural problems, cf. section 4–24. Organisations and private entities that perform tasks for the State, county municipality or municipality are considered on a par with public authorities. Public authorities are also obligated to disclose such information when ordered to do so by agencies which are responsible for implementation of the Act. When so instructed by these agencies, public authorities are also obligated in connection with cases to be settled by the County Board pursuant to sections 4–19, 4–20 and 4–21 to disclose information that is necessary to determine whether moving back to parents or spending time with them may lead to a situation or risk to the child as mentioned in sections 4–10, 4–11 or 4–12.

Practitioners of professions pursuant to the Act relating to Healthcare Personnel, Act relating to Mental Health Care, Act relating to Municipal Health Services, Act relating to Family Counselling Services and Mediators in Matrimonial Cases (cf. Marriage Act), and the Act relating to independent schools are also obligated to disclose information pursuant to the rules of the second paragraph.

(See also: [UN Secretary-General’s Study on Violence against Children – Information from Norway in response to the questionnaire](#))

Mitigation

Legislation should provide that no form of mitigation shall be allowed as a defense to FGM. The defense of culture, honor or religion should be specifically prohibited.

- The [European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\)](#) condemns any form or degree of FGM as “an act of violence against women which constitutes a violation of their fundamental rights, particularly the right to personal integrity and physical and mental health, and their sexual and reproductive health” and states that “such violations can under no circumstances be justified by respect for cultural traditions of various kinds or initiation ceremonies”.
- United Kingdom: [Female Genital Mutilation Act 2003, Sec. 1 - Offence of female genital mutilation](#):
 - (1) *A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris.*
 - (2) *But no offence is committed by an approved person who performs—*
 - (a) *a surgical operation on a girl which is necessary for her physical or mental health, or*
 - (b) *a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.*
 - (3) *The following are approved persons—*
 - (a) *in relation to an operation falling within subsection (2)(a), a registered medical practitioner,*
 - (b) *in relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.*
 - (4) *There is also no offence committed by a person who—*
 - (a) *performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and*
 - (b) *in relation to such an operation exercises functions corresponding to those of an approved person.*
 - (5) *For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual. (Emphasis Added).*
- [Victoria, Australia: Crimes Act 1958, Sec. 34A - Exceptions to offences under section 32](#)
 - (1) *It is not an offence against section [32](#) [Offence to perform female genital mutilation] if the performance of the female genital mutilation is by a surgical operation which is-*
 - (a) *necessary for the health of the person on whom it is performed and which is performed by a medical practitioner; or*

(b) is performed on a person in labour or who has just given birth, and for medical purposes or the relief of physical symptoms connected with that labour or birth, and which is performed by a medical practitioner or a midwife; or

(c) is a sexual reassignment procedure which is performed by a medical practitioner.

(2) For the purposes of subsection (1)(a), in determining whether an operation is necessary for the health of a person, the only matters to be taken into account are those relevant to the medical welfare or the relief of physical symptoms of the person. (Emphasis Added).

- [New Zealand: Crimes Act 1961 No. 43, sec. 204A \(Female Genital Mutilation\), Para. 4:](#)
In determining, for the purposes of subsection (3), whether or not any medical or surgical procedure is performed on any person for the benefit of that person's physical or mental health, no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice. (Emphasis Added).

Consent

Legislation should provide that consent of any person of any age or by a minor's parent is not a defense to a violation of this statute. Focus of legislation should be on the empowerment of women to reject the practice of FGM and enabling a shift in the social norms that support the practice and pressure women into undergoing it for themselves or others. The practice of FGM is so entrenched in social norms and expectations that, without a shift in those underlying norms and individual beliefs, true informed consent to undergo FGM for adult women, completely free from undue pressure, is difficult to ascertain.

- [European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\), Para 28:](#)
The European Parliament . . . [c]alls on the Member States to regard any form of FGM as a crime, irrespective of whether or not the woman concerned has given any form of consent . . .
- Sweden: [Act \(1982:316\) on Prohibiting the Genital Mutilation \("Circumcision"\) of Women, Sec. 1:](#)
An operation may not be carried out on the outer female sexual organs with a view to mutilating them or of bringing about some other permanent change in them ('circumcision'), regardless of whether consent has been given for the operation or not.

- [Victoria, Australia: Crimes Act 1958, Sec. 34 - Consent not a defence to a charge under sections 32 or 33:](#)
It is not a defence to a charge brought under section 32 [Offence to perform female genital mutilation] or 33 [Offence to take a person from the State with the intention of having prohibited female genital mutilation performed] to prove that the person on whom the act which is the subject of the charge was performed, or the parents or guardian of that person, consented to the performance of that act.
- [New Zealand: Crimes Act 1961 No. 43, sec. 204A \(Female Genital Mutilation\), Para 6:](#)
It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.

Extraterritoriality

- Legislation should prohibit the practice of taking girls out of a country where FGM is illegal to a country where the practice is allowed.
- Legislation should also provide that persons who commit FGM or procure, aid or counsel another who is not a resident of the country to commit FGM outside of the borders of their country shall be pursued, prosecuted and punished.
- Drafters should not require that FGM be a crime in the country where it was committed to prosecute individuals for behavior related to the practiced of FGM.

For example:

- [European Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\), Para. 28:](#)
The European Parliament . . . [c]alls on the Member States to . . . pursue, prosecute and punish any resident who has committed the crime of FGM, even if the offence was committed outside their borders (extraterritoriality).
- [New Zealand: Crimes Act 1961 No. 43, sec. 204B - Further offences relating to female genital mutilation:](#)
(1) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent that there be done, outside New Zealand, to or in relation to any child under the age of 17 years (being a child who is a New Zealand citizen or is ordinarily resident in New Zealand), any act which, if done in New Zealand, would be an offence against section 204A [defining the offence of FGM],—
 - (a) causes that child to be sent or taken out of New Zealand; or*
 - (b) makes any arrangements for the purposes of causing that child to be sent or taken out of New Zealand.*

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, aids, incites, counsels, or procures the doing, outside New Zealand, in relation to any person who is a New Zealand citizen or is ordinarily resident in New Zealand, of any act which, if done in New Zealand, would be an offence against section 204A, whether or not the act is in fact done.

(3) Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, incites, counsels, procures, or induces any person who is a New Zealand citizen or is ordinarily resident in New Zealand—

(a) to submit, outside New Zealand, to any act which, if done in New Zealand, would be an offence against section 204A; or

(b) to acquiesce in the doing, outside New Zealand, on that person, of any such act; or

(c) to permit any such act to be done, outside New Zealand, on that person,— whether or not, in any case, the act is in fact done.

- UK: [Female Genital Mutilation Act 2003, Sec. 3 and 4:](#)

3 Offence of assisting a non-UK person to mutilate overseas a girl's genitalia

3(1): A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom national or permanent United Kingdom resident to do a relevant act of female genital mutilation outside the United Kingdom.

3(2): An act is a relevant act of female genital mutilation if—

(a) it is done in relation to a United Kingdom national or permanent United Kingdom resident, and

(b) it would, if done by such a person, constitute an offence under section 1 [definition of the offence of FGM].

4 Extension of sections 1 to 3 to extra-territorial acts

4(1): (1) Sections 1 to 3 extend to any act done outside the United Kingdom by a United Kingdom national or permanent United Kingdom resident.

- [Canadian Criminal Code, sec. 273.3:](#)

(1) No person shall do anything for the purpose of removing from Canada a person who is ordinarily resident in Canada and who is ...

...(c) under the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section . . . 268 [criminalizing excision] . . . in respect of that person.

- [Victoria, Australia: Crimes Act 1958, Sec. 33 - Offence to take a person from the State with the intention of having prohibited female genital mutilation performed:](#)

(1) A person must not take another person from the State, or arrange for another person to be taken from the State, with the intention of having prohibited female genital mutilation performed on the other person.

Penalty: Level 4 imprisonment (15 years maximum).

(2) In proceedings for an offence under subsection (1), proof that-

- (a) the accused took the person, or arranged for the person to be taken from the State; and*
- (b) the person was subjected, while outside the State, to prohibited female genital mutilation-*

is, in the absence of proof to the contrary, proof that the accused took the person or arranged for the person to be taken from the State with the intention of having prohibited female genital mutilation performed on the person.

Sweden not only prohibits female genital mutilation within its borders, but also punishes any person residing in Sweden who participates in FGM in another country even if that country allows the practice.

- Sweden: [Act \(1982:316\) on Prohibiting the Genital Mutilation \(“Circumcision”\) of Women](#), sec. 3:

Anyone who has committed an offence under the terms of this Act is to be sentenced in a Swedish court of law, even if Chapter 2 Sections 2 or 3 of the [Penal Code](#)... (describing the limited circumstances in which Swedish courts can prosecute, under Swedish law, crimes committed outside the Realm of Sweden) ... are inapplicable.

Child protection provisions

- Legislation should ensure that there are child welfare laws and policies to prevent child abuse.
- Legislation should identify FGM as a form of child abuse.
- Legislation should mandate that FGM prevention and prosecution are given the same resources as other forms of child abuse.
- Legislation should create a child protection system that contains, at a minimum, survivor support, alternative care options, family support services, justice system responses (see [order for protection section](#) below) and referral mechanisms. (See: [UNICEF Child Protection Strategy](#) for all the components necessary to establish a child protection system; and [Child Protection: A handbook for Parliamentarians](#))
- Legislation should create child protection protocols for each sector that comes in contact with abuse in the form of FGM, including social services, police and the judicial system. Such protocols can help in creating dialogue about FGM, assessing the level of risk to a child, and in ensuring consistent and appropriate referrals to various services based on the particular circumstances.

For example, the [European Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\)](#), Paras. 28 and 29, state:

The European Parliament:

Calls on the member states to . . . adopt legislative measures to allow judges or public prosecutors to take precautionary and preventive measures if they are aware of cases of women or girls at risk of being mutilated;

Calls on the Member States to implement a preventive strategy of social action aimed at protecting minors without stigmatizing immigrant communities, through public programmes and social services aimed at both preventing these practices (training, education and awareness-raising among the communities at risk) and assisting the victims who have been subjected to them (psychological and medical support including, where possible, free medical treatment to repair the damage); calls also on the Member States to consider, in accordance with child protection legislation, that the threat or risk of being subjected to FGM may justify intervention by the authorities [.]

Core elements in child protection laws and systems to protect against fmg

The following elements should be established as the core elements in child protection laws and systems to protect against FGM. Elements are discussed in detail further below.

- Legislation should provide for an emergency order for protection remedy for a female in need of protection from undergoing FGM.
- Legislation should authorize the removal of the child from the home if the court determines that a responsible adult has a reasonable fear that a parent or parents or guardian are considering authorizing the performance of FGM.
- Legislation should authorize the placement of a child in danger of infliction of FGM in a shelter, refuge or foster home.
- Legislation should authorize the continuing placement of a child in a shelter or foster home until the child can be reconciled with the family, or, if the parent or parents will not give up their intention to have FGM performed on the minor child, authorization for the child to continue in shelter or foster care and attend school locally, or attend a boarding school to continue her education.
- Legislation should authorize the suspension of travel authority for the child if the court determines that the parents are considering authorizing the performance of FGM or if the court determines that the child or a responsible adult has a reasonable fear that the parents are considering authorizing the performance of FGM.
- Legislation should provide for procedures by which the parents can regain custody of the minor child, including receiving counseling and warnings. Once the minor child has been returned to her parents, legislation should provide for

on-going visits to the minor child by social service providers and counselors to ensure the well-being of the minor child. Legislation should provide for counseling of parents to ensure that minor children do not receive pressure to undergo FGM.

- Legislation should provide for periodic physical examinations of a child if a court finds that there are reasonable grounds to suspect a child may be at risk of FGM to ensure that the child is not subjected to FGM.
- Legislation should provide that where court orders are issued for protection against FGM, the order remain in place until the parents have demonstrated at a court hearing that they understand that FGM is illegal and has adverse health consequences, and that they will not subject their daughter to FGM.
- Legislation should provide for child-centered legal services, including representation for petitioning for civil or criminal liability victim compensation.
- Legislation should presume that there is no justification for the practice of FGM and it is in the child's best interests to not undergo FGM.

Examples of relevant language in child protection legislation:

- Kenya, [Children Act of 2001](#):

14. No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development.

119. (1) For the purposes of this Act, a child is in need of care and protection -

...

(h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; ...

International human rights organization [Equality Now](#) reported a 2010 case in Kenya in which both the practitioner and father of a 12 year-old girl who had died from undergoing FGM, were charged with manslaughter and sentenced to ten years imprisonment. The court found that the act violated [Section 14 of the Children's Act of 2001](#) and the girl's death qualified as manslaughter under [Sections 202 and 205 of the Kenyan Penal Code](#). (See: [Equality Now Commends Kenyan Law Enforcement for Sentencing Circumciser and Father to 10 Years' Imprisonment After Death of Maasai Girl](#))

- South Australia's [Children's Protection Act, Section 26B](#)
Protection of children at risk of genital mutilation
26B. (1) If the Court is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.

Examples — The Court might for example make an order—

(a) preventing a person from taking the child from the State; or

(b) requiring that the child's passport be held by the Court for a period specified in the order or until further order; or

(c) providing for the periodic examination of the child to ensure that the child is not

subjected to female genital mutilation.

(2) An application for an order under this section may be made by a member of the police force or by the Chief Executive.

(3) The Court may make an order on an application under this section without giving a person who is to be bound by the Court's order notice of the proceedings or an opportunity to be heard in the proceedings.

(4) However, in that case the Court must allow the person against whom the order is made a reasonable opportunity to appear before the Court to show why the order should be varied or revoked.

(5) In proceedings under this section the Court must assume that it is in the child's best interest to resist pressure of racial, ethnic, religious, cultural or family origin that might lead to genital mutilation of the child.

- [Ghana Children's Act of 1998](#), section 5:

"No person shall deny a child the right to live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would—

(a) lead to significant harm to the child; or

(b) subject the child to serious abuse; or

(c) not be in the best interest of the child.

CASE STUDY: United Kingdom, [Children Act of 1989](#):

FGM has been a criminal offence in the United Kingdom since the [Prohibition of Female Circumcision Act 1985](#), which entered into force on July 16, 1985. In 2003, the Act was replaced with the [Female Genital Mutilation Act 2003](#), which, in addition, makes it a criminal offence for permanent residents or nationals of the UK to carry out or to aid in the carrying out of FGM abroad.

In addition to criminalizing the practice of FGM, the United Kingdom has integrated the prevention of FGM into the child protection system. FGM is considered a form of physical abuse and, as a result, is a basis for government intervention to protect the child if there is reasonable suspicion of child abuse. The [Children Act of 1989](#) sets forth a framework for local state authorities to follow for the care and protection of a child. In practice, however, these protections may still be limited.

Pursuant to [Section 47](#) of the Act, local authorities must safeguard and promote the welfare of children and investigate cases in which children are subjected to or likely to suffer “significant harm”. Section 47 has been deemed applicable to cases in which there is reason to believe that a girl has been or will likely be subjected to FGM. (See: [Working Together to Safeguard Children \(2006\)](#), [Department for Education](#) (Formerly Department for Children, Schools, and Families; and *Protecting Girls from Female Genital Mutilation and Harmful Practices: Challenges and Opportunities for Legal Intervention in Africa*, Report of a Regional Workshop, Nairobi, 24-28 July 2006)

Local authorities can apply for several protection orders to protect the child from FGM. As a preliminary measure, if the parents do not agree to an informal assessment, a “child assessment order” can be issued under [Section 43](#) of the Children Act. The order provides limited protection for the child and is only valid for seven days from the date specified. [Section 8](#), Article 1 of the Act also identifies the following types of orders, some of which may be useful to protect children from FGM:

- *“a contact order” means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;*
- *“a prohibited steps order” means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;*
- *“a residence order” means an order settling the arrangements to be made as to the person with whom a child is to live; and*
- *“a specific issue order” means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.*

In cases where the court deems further action necessary, it can issue a “prohibited steps order”. This order prohibits the parent from carrying out a specified action, in this case FGM, without the consent of the court and may be valid until the child reaches 16 years. In addition, pursuant to a “prohibited steps order”, authorities may prevent a girl from being removed from the country if there is evidence that the girl will likely be subjected to FGM if she leaves.

As a last resort, government authorities may remove a girl from her family if there is reason to believe that she will be subjected to FGM. Pursuant to [Section 31](#), a “supervision order” can also be issued by the court placing the child in the care of a “*designated local authority; or putting him under the supervision of a designated local authority or of a probation officer.*” To issue a care or supervision order, a court must find that:

- (a) *that the child concerned is suffering, or is likely to suffer, significant harm; and*
- (b) *that the harm, or likelihood of harm, is attributable to—*
 - (i) *the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or*
 - (ii) *the child’s being beyond parental control.*

A supervision order initially lasts for a year but can be extended to a maximum of three years. In the most urgent cases, an emergency protection order can be applied for under [Section 44](#), authorizing the removal of the child from her place of residence. This order is valid for eight days with a possible extension for a further seven days. In emergency situations, [Section 46](#) also allows police to place a child under police protection for up to 72 hours. (See: [Salford Safeguarding Children Board Manual](#) (2009) [Appendix 1 – The Legal Framework](#) of [4.1.13 Female Genital Mutilation](#))

The United Kingdom also provides for criminal injuries compensation in all cases of FGM under the [Criminal Injuries Compensation Act 1995](#). For children in the care of local authorities, mechanisms are in place for this claim to be pursued by those in the care system until the child can seek her own independent advisor. (See: [Salford Safeguarding Children Board Manual](#) (2009) [Appendix 1 – The Legal Framework](#) of [4.1.13 Female Genital Mutilation](#))

Standing to apply for order for protection

- Legislation should provide that any reputable person, such as a family member, teacher, neighbor, or counselor, having knowledge of a child who appears to be in need of protection, and having reason to fear imminent bodily harm for the child from the perpetration of FGM, may petition the court for an order for protection from FGM.
- Legislation should provide that a girl or woman over the age of 10 who has reason to fear her own imminent bodily harm from the perpetration of FGM also has standing to apply for an order for protection.

Evidence needed to obtain order for protection

Legislation should state that the testimony of those with standing to apply for an order for protection from FGM, in court or by sworn affidavit, is sufficient evidence on its own for the issuance of the order for protection. No further evidence should be necessary.

Petition for emergency order for protection

- Legislation should provide that the petition for an emergency order for protection shall allege the existence of or immediate and present danger of the infliction of FGM.
- Legislation should provide that the court has jurisdiction over the parties to a matter involving FGM, notwithstanding that there is a parent in the child's household who is willing to enforce the court's order and accept services on behalf of the family. This ensures continued protection in cases where parents may be divided on the issue of whether their daughter should be forced to undergo FGM.
- Legislation should provide an emergency order for protection remedy for a female in need of protection from undergoing FGM (See Order for protection Section of [Domestic Violence](#)).
- Legislation should state that no waiting period is required for the emergency protection order to take effect.

The emergency order for protection should include:

- Injunction against the performance of FGM;
- Suspension of parental authority if the court determines that a parent or parents are considering authorizing the performance of FGM on a minor child or that the child or a responsible adult has a reasonable fear that the parents are considering authorizing the performance of FGM; and
- Suspension of travel authority if the court determines there is risk that the child will be taken out of the country to undergo FGM.

Travel restrictions

Legislation should provide authorization for courts to suspend travel authority for the child if the court determines that the parents are considering authorizing the performance of FGM or that the child or a responsible adult has a reasonable fear that the parents are considering authorizing the performance of FGM.

Promising Practice: [South Australia's Children's Protection Act, Section 26B\(1\)](#)

In South Australia, a court that suspects a child is at risk of undergoing FGM may make an order for the protection for the child. The order may prohibit the removal of the child from the state and require that the child's passport be held by the court.

Protection of children at risk of genital mutilation

26B. (1) *If the Court is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.*

Examples — The Court might for example make an order—

(a) preventing a person from taking the child from the State; or

(b) requiring that the child's passport be held by the Court for a period specified in the order or until further order; or

(c) providing for the periodic examination of the child to ensure that the child is not subjected to female genital mutilation. (Emphasis added).

Copy of order for protection to law enforcement agency

An emergency order for protection shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the child.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system of verification, information as to the existence and status of any order for protection issued.

Parental intervention and education program

Legislation should provide that the parent, parents, or guardian of a child in a shelter, refuge or foster care home shall attend an intervention and education program on the issue of female genital mutilation and its adverse health consequences. Legislation should require that the intervention and education program be established by NGOs with experience in this field. Legislation should require that the state fund the intervention and education program.

Review of status of child in shelter, refuge or foster care home

- When an emergency order for protection is in effect and a child is residing in a shelter, refuge, or foster care home, the court shall periodically review the status of the child and of the parent or guardian regarding the issue of female genital mutilation. (See [Hearing by Court](#) below).

- If the court finds that it is in the best interest of the child, the court may order that the child may return home to her parents.
- Legislation shall provide that all other terms of the order for protection, including the injunction against travel and the injunction against the performance of female genital mutilation, shall remain in place until the court finds that it is in the best interest of the child for each injunction to be lifted.
- Legislation should require follow-up monitoring of the child who returns to her parents to ensure that FGM does not take place later.
- Legislation should provide that if the court finds that it is in the best interest of the child to remain in the shelter, refuge or foster care home, the court may continue the child's placement in the facility.

Violation of order for protection

Legislation should state that violation of the emergency order for protection is a crime.

No time limit on order for protection

Legislation should state that an emergency order for protection should be left in place permanently, or until lifted by decision of the court after a hearing, or until the child attains the age of majority.

Hearing by court

- Legislation should provide that a parent, parents or guardian may request a hearing on the emergency order for protection to determine whether the child shall continue to reside at a shelter, refuge, or foster home.
- Legislation should provide that the hearing shall occur within 3 days of the removal of a child to a shelter, refuge, or foster home.
- Legislation should provide that hearings by the court on an emergency order for protection shall be without a jury and may be conducted in an informal manner. In all court proceedings involving a child alleged to be in need of protection, the court shall admit only evidence that would be admissible in a civil trial.
- Legislation should provide that allegations of a petition alleging a child to be in need of protection must be proved at trial by clear and convincing evidence.

Right to participate in proceedings

Legislation should provide that a child who is the subject of an emergency order for protection hearing, and the parents, guardian, or legal custodian of the child, have the right to participate in all proceedings on an emergency order for protection hearing.

Testimony of child

- Legislation should provide that in the hearing for the order for protection, the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so.
- Legislation should provide that informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom.
- Legislation should provide that the court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed.
- Legislation should provide that the court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned.

CASE STUDY: United States, Minnesota

The Child Protection Statutes for the State of Minnesota in the United States provide protective provisions regarding the examination and testimony of a child within the child protection services.

2009 Minnesota Statutes, Child Protection, [Minn. Stat. 260C.163](#) – Hearing:

Subd. 6. Examination of child.

In any child in need of protection or services proceeding, neglected and in foster care, or termination of parental rights proceeding the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so. Informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom. The court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed. The court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned in accordance with subdivision 7.

Subd. 7. Waiving presence of child, parent.

The court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In any proceeding, the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian.

Termination of parental rights

If, after a hearing, the court finds by clear and convincing evidence that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent intent and desire to inflict female genital mutilation on a child, it may terminate parental rights. Upon the termination of parental rights all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceeding concerning the child.

Medical examination of children

Legislation should allow for courts to order compulsory physical examinations of individuals found at risk of undergoing FGM. Education and guidelines regarding these examinations should be provided to health professionals so they can be effective tools of protection as opposed to discriminatory tactics. Drafters should allow the girl or her guardian a choice of doctors from a selection that have undergone the required education and training on the practice of FGM, its consequences, and the treatment of women or girls who have already undergone the practice.

CASE STUDY: Approaches to Question of Medical Examination

Mandating compulsory medical examinations of individuals at risk for FGM can be problematic and controversial. Such examinations can be seen as an invasion of privacy and an infringement upon parental rights. In addition, such a practice can seem discriminatory in practice. For example in the Netherlands, a special Commission found that the state did not have the authority to order that victims of a crime have their freedom impinged upon, deciding that public health was not at issue. The Commission found that compulsory exams of African girls would not be feasible, and would be discriminatory and repressive. They concluded that the focus should be on increased training of professionals who are likely to come into contact with FGM-practicing communities. (See [Leye-Sabbe](#) Expert paper p. 9)

In spite of these potential problems, however, legislation should still allow medical examination as a possible tool for courts to use in circumstances where the risk of FGM is found. To prevent compulsory medical examinations from being ordered in an arbitrary or discriminatory fashion, the standard of proof required before such an order can be issued should be carefully developed and consistently implemented. (See: [The FGM Legislation Implemented: Experiences from Sweden](#)) Training should be provided to doctors and personnel who perform examinations and examinations should be used as an opportunity to educate individuals and families regarding the health risks and legal consequences of performing FGM.

For example:

- [South Australia's Children's Protection Act, Section 26B\(1\)](#)

In South Australia, a court that suspects a child is at risk of undergoing FGM may make an order for the protection for the child. The order may include the periodic physical examination of the child at risk.

Protection of children at risk of genital mutilation

26B. (1) *If the Court is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.*

Examples — The Court might for example make an order—

(a) preventing a person from taking the child from the State; or

(b) requiring that the child's passport be held by the Court for a period specified in the order or until further order; or

(c) providing for the periodic examination of the child to ensure that the child is not subjected to female genital mutilation. (Emphasis added).

- [European Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU \(2008/2071\(INI\)\)](#):

The European Parliament has recommended that women and girls who are granted asylum because of the threat of FGM should, as a preventative measure, have regular health check-ups to protect them from any threat of FGM being carried out subsequently in the EU.

The European Parliament, ...

- 4. Insists that women and girls who are granted asylum in the EU because of the threat of FGM should as a preventive measure have regular check-ups by health authorities and/or doctors, to protect them from any threat of FGM being carried out subsequently in the EU; considers that this measure would be in no way discriminatory against these women and girls, but a way to ensure that FGM is banned in the EU;*
- 5. Calls for this overall strategy to be accompanied by educational programmes and the organisation of national and international awareness raising campaigns; ...*

Child protection advisory body

- Legislation should mandate the formation of a child protection advisory board consisting of experts in the field who will be able to identify problems with implementation of the law and areas in which more research is needed.
- Legislation should require that the advisory board be charged with the duty of researching customary laws, community practices, and attitudes so that evolving practices may be noted and amendments to the law may be drafted as needed.

Data collection on emergency orders for protection

- Legislation should require data collection on specific aspects of the implementation of the new law, such as number of emergency orders for protection sought, granted, denied, cancelled, or appealed.
- Legislation should require that the data be disaggregated by the type of order for protection sought so as to be able to identify an order for protection on the basis of FGM, as well as the general identity of the petitioner (the individual at risk, family member, or other aware individual).
- Legislation should require that this data be kept and made available publicly.
- Legislation should require qualitative data about the effectiveness of orders for protection to be gathered on a regular basis from police, courts, child protection agencies, counseling centers, shelters, schools, and from survivors.
- Legislation should require that this data be compiled by the relevant government ministry and be published on an annual basis.

Victims' rights and responding to needs

Rights of survivors

- Legislation should provide for women-only police and protection units at law enforcement centers.
- Legislation should provide that persons who are at risk of FGM may seek refuge at state-owned shelters. Such shelters should be staffed by survivors of FGM and staff who can provide support, legal advice, and child protection services for survivors of FGM, including specialized services for particular groups such as immigrants. Legislation should provide that governments fund the shelters.
- Legislation should provide access to health care for immediate injuries and long-term care for survivors of FGM, including free medical repairs.
- Legislation should provide for free legal services and free psychological services and vocational training for survivors of FGM to make them self-supporting.
- Legislation should provide for a free, 24-hour hotline that is accessible from anywhere in the country and staffed by persons trained in FGM issues.

CASE STUDY: Burkina Faso – 24-hour Hotline and Education

In 1990, a presidential decree established the National Committee against Excision (CNLPE), administered by the Ministry for Social Action and the Family. Since then, CNLPE has set up a 24-hour hotline for reporting FGM that has already occurred or is likely to occur. The hotline is accessible in rural areas as well as urban areas. In cases where FGM has occurred, the parents and the practitioner are served notice to report to police, who have been trained and instructed to actively prevent FGM and arrest those who practice it. In cases where FGM is likely to occur, CNLPE educates the family about the harmful consequences and illegality of FGM.

The government has also established a clinic specifically for women suffering from FGM-related complications, and another that provides clitoral repair services for FGM survivors. (See: *Protecting Girls from Female Genital Mutilation and Harmful Practices: Challenges and Opportunities for Legal Intervention in Africa – Report of a Regional Workshop, Nairobi, 24-28 July 2006*, p. 21. (Hereinafter Nairobi Regional Workshop))

Restitution and compensation for survivors

- Legislation should provide that a survivor of female genital mutilation has the right to receive restitution as part of the criminal case against the offender if the offender is convicted.
- Legislation should provide for mechanisms of collection that the victim may easily use to collect the order for restitution from the perpetrator.
- Legislation should require that the court, or a person or agency designated by the court, such as a survivor advocate, should obtain an affidavit from the survivor describing the items or elements of financial loss, including monetary amounts and the reasons justifying the amounts so specified.
- Legislation should provide that the request for restitution may include out-of-pocket expenses resulting from the crime, such as medical, therapy, or mental health treatment costs, replacement of wages, tuition costs, relocation costs, cost of services lost due to the crime, funeral expenses, and other expenses not itemized but incurred as a result of the crime, including funds expended for participation in the legal process.
- Legislation should provide that an actual or prospective civil action involving the crime shall not be used by the court to deny the survivor's right to obtain restitution as part of the criminal case.
- Legislation should also provide that a court may amend or issue an order for restitution at a later time if the true extent of the survivor's loss was not known at the time of the hearing on the restitution request or at the time of disposition of the case.

- Legislation should also provide for victim compensation or a reparation fund that operates separate from court ordered restitution that does not rely on a criminal conviction.
- Legislation may invest a Crime Reparations Board with the authority to request restitution on behalf of a survivor, and to collect the restitution ordered by the court and make payment directly to the survivor.
- Legislation should provide for a third party to pursue a criminal complaint, restitution and/or reparations on behalf of a minor child with court permission or appointment of a guardian ad litem. Protocols should be in place to ensure any award the child receives is protected and used on her behalf.
- Legislation should allow a victim to pursue a criminal complaint, restitution and/or reparations after she reaches the age of majority.

Promising Practice: United States, Minnesota – Restitution and Reparations

A victim of certain violent crimes in Minnesota is eligible to receive court ordered restitution or federal and state funded reparations. The Minnesota legislature created a Crime Victims Reparations Board in 1974 to help victims of violent crime cope with the financial losses and expenses directly resulting from the crime. Whereas restitution is awarded by the court as part of the sentence for a guilty criminal conviction, reparation is not related to or dependent on the criminal case. Under Minnesota law, victims of certain violent crimes are entitled to reparations from the state regardless of whether the perpetrator is prosecuted, as long as the crime is reported to police in a timely fashion, a claim is filed with the Board and other requirements are met. Individuals are eligible if they are a victim of certain violent crimes and the expense is not covered by any other source. The fund does not cover property loss or damage. If there is a criminal conviction at a later time, the Reparations Board may, in turn, pursue restitution from the perpetrator to cover the amount of reparation the Board had previously paid the victim.

More information about the Reparations Board is available at the [Minnesota Office of Justice Programs](#) website.

Promising Practice cont.

More information on Restitution can be found in the Minnesota Statutes:

[Minn Stat. 611A.04](#) – Order of Restitution:

Subdivision 1. Request; decision.

(a) A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. The court, or a person or agency designated by the court, shall request information from the victim to determine the amount of restitution owed. The court or its designee shall obtain the information from the victim in affidavit form or by other competent evidence. Information submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property. A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. In order to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing. The court administrator shall provide copies of this request to the prosecutor and the offender or the offender's attorney at least 24 hours before the sentencing or dispositional hearing. The issue of restitution at the sentencing or dispositional hearing or hearing on the restitution request may be continued if the victim's affidavit or other competent evidence submitted by the victim is not received in time. At the sentencing or dispositional hearing, the court shall give the offender an opportunity to respond to specific items of restitution and their dollar amounts in accordance with the procedures established in section 611A.045, subdivision 3.

(b) The court may amend or issue an order of restitution after the sentencing or dispositional hearing if:

- (1) the offender is on probation, committed to the commissioner of corrections, or on supervised release;*
- (2) sufficient evidence of a right to restitution has been submitted; and*
- (3) the true extent of the victim's loss or the loss of the Crime Victims Reparations Board was not known at the time of the sentencing or dispositional hearing, or hearing on the restitution request.*

If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, the prosecutor, and the Crime Victims Reparations Board at least five business days before the hearing. The court's restitution decision is governed by this section and section 611A.045.

(c) The court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented. If the court grants partial restitution it shall also specify the full amount of restitution that may be docketed as a civil judgment under subdivision 3. The court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution. In the case of a defendant who is on probation, the court may not refuse to enforce an order for restitution solely on the grounds that the order has been docketed as a civil judgment.

Subd. 1a. Crime board request.

The Crime Victims Reparations Board may request restitution on behalf of a victim by filing a copy of orders of the board, if any, which detail any amounts paid by the board to the victim. The board may file the payment order with the court administrator or with the person or agency the court has designated to obtain information relating to restitution. The board shall submit the payment order not less than three business days after it is issued by the board. The court administrator shall provide copies of the payment order to the prosecutor and the offender or the offender's attorney within 48 hours of receiving it from the board or at least 24 hours before the sentencing or dispositional hearing, whichever is earlier. By operation of law, the issue of restitution is reserved if the payment order is not received at least three days before the sentencing or dispositional hearing. The filing of a payment order for reparations with the court administrator shall also serve as a request for restitution by the victim. The restitution requested by the board may be considered to be both on its own behalf and on behalf of the victim. If the board has not paid reparations to the victim or on the victim's behalf, restitution may be made directly to the victim. If the board has paid reparations to the victim or on the victim's behalf, the court shall order restitution payments to be made directly to the board.

Subd. 1b. Affidavit of disclosure.

An offender who has been ordered by the court to make restitution in an amount of \$500 or more shall file an affidavit of financial disclosure with the correctional agency responsible for investigating the financial resources of the offender on request of the agency. The commissioner of corrections shall prescribe what financial information the affidavit must contain.

Subd. 2. Procedures.

The offender shall make restitution payments to the court administrator of the county, municipal, or district court of the county in which the restitution is to be paid. The court administrator shall disburse restitution in incremental payments and may not keep a restitution payment for longer than 30 days; except that the court administrator is not required to disburse a restitution payment that is under \$10 unless the payment would fulfill the offender's restitution obligation. The court administrator shall keep records of the amount of restitution ordered in each case, any change made to the restitution order, and the amount of restitution actually paid by the offender. The court administrator shall forward the data collected to the state court administrator who shall compile the data and make it available to the Supreme Court and the legislature upon request.

Subd. 3. Effect of order for restitution.

An order of restitution may be enforced by any person named in the order to receive the restitution, or by the Crime Victims Reparations Board in the same manner as a judgment in a civil action. Any order for restitution in favor of a victim shall also operate as an order for restitution in favor of the Crime Victims Reparations Board, if the board has paid reparations to the victim or on the victim's behalf. Filing fees for docketing an order of restitution as a civil judgment are waived for any victim named in the restitution order. An order of restitution shall be docketed as a civil judgment, in the name of any person named in the order and in the name of the crime victims reparations board, by the court administrator of the district court in the county in which the order of restitution was entered. The court administrator also shall notify the commissioner of revenue of the restitution debt in the manner provided in chapter 270A, the Revenue Recapture Act. A juvenile court is not required to appoint a guardian ad litem for a juvenile offender before docketing a restitution order. Interest shall accrue on the unpaid balance of the judgment as provided in section 549.09. Whether the order of restitution has been docketed or not, it is a debt that is not dischargeable in bankruptcy. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Subd. 4. Payment of restitution.

When the court orders both the payment of restitution and the payment of a fine and the defendant does not pay the entire amount of court-ordered restitution and the fine at the same time, the court may order that all restitution shall be paid before the fine is paid.

Subd. 5. Unclaimed restitution payments.

Restitution payments held by the court for a victim that remain unclaimed by the victim for more than three years shall be deposited in the crime victims account created in section 611A.612.

At the time the deposit is made, the court shall record the name and last known address of the victim and the amount being deposited, and shall forward the data to the Crime Victims Reparations Board.

Civil lawsuits

- Legislation should allow civil lawsuits against perpetrators of FGM. Any requirements that do not allow girls or their parent or guardian, or women to bring civil lawsuits against a family member who is a perpetrator, or that require the consent of a husband or other family member in order to bring a civil lawsuit, should be abolished. (See: [UN Handbook 3.12.1](#))
- Legislation should allow survivors/complainants to bring civil lawsuits against governmental or non-governmental parties for not exercising due diligence to prevent, investigate or punish female genital mutilation. Legislation should allow survivors/ complainants to bring civil lawsuits on the basis of anti-discrimination laws, human rights provisions, or civil rights laws. (See: [UN Handbook 3.12.2](#))
- Legislation should allow for a third party to pursue an action on behalf of a minor child with court permission or appointment of a guardian ad litem. Protocols should be in place to ensure any award the child receives is protected and used on her behalf.
- Legislation should allow a victim to pursue an action, on her own behalf, after she reaches the age of majority.

Immigration and asylum

- Legislation and guiding policies on immigration and asylum on the basis of FGM should be developed within the framework of international human rights law. The United Nations High Commissioner for Refugees (UNHCR), recognizes “that a girl or woman seeking asylum because she has been compelled to undergo, or is likely to be subjected to FGM, can qualify for refugee status under the 1951 Convention relating to the Status of Refugees.” Furthermore, given “certain circumstances, a parent could also establish a well-founded fear of persecution, within the scope of the 1951 refugee definition, in connection with the exposure of his or her child to the risk of FGM.” (See: UNHCR, [Guidance Note on Refugee Claims Relating to Female Genital Mutilation, May 2009](#))
- The UNHCR officially considers “FGM to be a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution.” It also recognizes fear of undergoing FGM is a well-founded fear of persecution that can be related to membership of a particular social group, as well as political opinion or religion. “FGM is inflicted on girls and women because they are female, to assert power over them and to control their sexuality. The practice often forms part of a wider pattern of discrimination against girls and women in a given society.” In addition, the UNHCR recommends that FGM be recognized as a “continuing form of harm” such that a woman or girl who has already been subjected to FGM may still have a well-founded fear of further persecution.”

(See: UNHCR, [Guidance Note on Refugee Claims Relating to Female Genital Mutilation, May 2009](#))

- Important elements of legislation and policies on asylum relating to FGM should include the following:
 - Legislation should provide that the threat of FGM shall constitute persecution for the purposes of asylum law. Drafters should provide that those who may be subject to FGM should constitute a “particular social group” for the purposes of asylum law. (See: [UN Handbook, 3.14](#))

Examples:

- **United States:** “In the *Matter of Fauziya Kassinja*, 21 I. & N. Dec. 357, Interim Decision 3278, 1996 WL 379826 (Board of Immigration Appeals 1996), the United States of America Department of Justice Board of Immigration Appeals granted asylum to a woman who had fled from Togo to avoid being subjected to female genital mutilation. However, this reasoning has not been consistently applied by the courts in the United States of America to all cases of gender-based violence.” ([UN Handbook, 3.14](#))
 - **Germany:** A woman from Cote d’Ivoire petitioned the administrative court in Maagdenburg for asylum on the basis that she was at risk of being subjected to FGM if she returned. The court determined that the government of Cote d’Ivoire would not likely protect the woman upon her return and that it was highly probable that she would be subject to FGM. The court held that performing FGM on a person against her will is a violation of her physical and mental integrity and recognized her right to asylum. (See: [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), p. 161)
- Legislation should provide that risk of undergoing FGM is a basis for asylum not only for the individual at risk but also for her predominant caretakers or family. Legislation should provide that if a resident is at risk of FGM, she and her family may apply for residence status, even if the individual at risk is already a resident or citizen but her caretakers or family are not.

Examples:

- **United States:** In *Abay v. Ashcroft*, 368 F.3d 634 (6th Cir. 2004) the Sixth Circuit found that an Ethiopian girl and her mother both had a well-founded fear of persecution. The court held that since FGM is ubiquitous in Ethiopia, the daughter had a well-founded fear of being subject to FGM, and the mother’s fear of “being forced to witness the pain and suffering of her daughter” was well-founded.
- **The Netherlands** will grant residence permits to girls at risk for FGM in their countries of origin and their family members if relevant conditions are met. See: The Interim Supplement to the Aliens Act Implementation Guidelines (TBV 2003/48), as described in [Fourth Dutch Implementation Report on the](#)

[UN Convention on the Elimination of all Forms of Discrimination against Women](#) (CEDAW – UN Women’s Convention) 2000-2004

- Legislation should recognize FGM as a continuing harm and grant asylum based on past subjection to FGM.

Example:

- **United States:** In *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005), the Ninth Circuit granted asylum to a Somali woman based on FGM. The court held that FGM is a continuing harm analogous to forced sterilization.
 - **United States:** In *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007), the Eighth Circuit held that a showing of past persecution by FGM was sufficient to establish a presumption of a well-founded fear of persecution because the applicant could suffer forms of persecution other than FGM in the future.
- Legislation should provide for a woman whose status is dependant on her husband’s to receive independent status based on FGM for herself or her daughters.
 - Drafters should be sensitive to the effect a criminal conviction may have upon the immigration status of a person who performs or procures FGM. In consideration to the best interests of a child, legislation should be carefully constructed to avoid subjecting to deportation those convicted of performing or procuring FGM who are also parents or otherwise caretakers to minors, where such deportation would leave children without parents or caretakers. Such awareness in drafting legislation would prevent criminal legislation from being used as a pretext for harassing members of a minority or refugee group that has traditionally practiced FGM but has immigrated to a country where it is illegal.
 - Drafters should ensure that health services and education on FGM are provided to all immigration and asylum seekers. Such services should include information on the risks of FGM, information for those who have already undergone FGM relating to complications especially during pregnancy, as well as the legal consequences of practicing FGM.

Promising Practice: United States – Mandatory information to immigrant and non-immigrant entrants regarding FGM

United States: The United States Citizenship and Immigration (formerly Immigration and Naturalization) Services is required by law to provide information about FGM and the legal consequences of practicing FGM in the United States to immigrants and non-immigrants entering the United States from countries where FGM is widely practiced. The statute states:

[8 USC §1374 \(2005\) Information regarding female genital mutilation](#)

(a) Provision of information regarding female genital mutilation

The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:

(1) Information on the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.

(2) Information concerning potential legal consequences in the United States for
(A) Performing female genital mutilation, or
(B) Allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.

(b) Limitation

In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) of this section to aliens from such countries.

(c) "Female genital mutilation" defined

For purposes of this section, the term "female genital mutilation" means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.

For more information on FGM and asylum claims in the United States see: [Asylum Law and Female Genital Mutilation: Recent Developments](#), Yule Kim, CRS Report for Congress, 15 February 2008; [CGRS Advice- Female Genital Cutting Asylum Cases](#), Center for Gender and Refugee Studies (October 2007).

For reference to additional cases see [Ageng'o](#), Expert paper p.5-9.

Roles and responsibilities

Police protocols

- Legislation should require the development of police protocols that are centered upon survivor safety and respectful investigation of FGM.
- Legislation should state that police must develop protocols for youth and survivor interviews, and for immediate medical testing, in order that the survivor may be questioned and examined in a respectful and timely manner, and at an age/developmentally appropriate level, for successful evidence use at trial.
- Legislation should require that police coordinate with prosecutors, survivor support groups and social services, including child protection agencies.
- Legislation should require that police receive training on a regular basis on the latest information about female genital mutilation and the most respectful methods of handling FGM survivors.
- Legislation should provide that law enforcement professionals who do not pursue cases of FGM shall be penalized.

Promising Practice: Section 8(b) of the [**Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice**](#), states:

Member States are urged, within the framework of their national legal systems . . . [t]o develop investigative techniques that do not degrade women subjected to violence and minimize intrusion, while maintaining standards for the collection of the best evidence[.]

- Specialized investigative units and procedures and multidisciplinary teams of police and social workers are some of the tools police can utilize to ensure that victims are not further traumatized as a result of the investigation. Sensitive and personal questions should be handled only by investigators who have been thoroughly trained on FGM issues. These areas where interviews and physical examinations of FGM victims are conducted should be comfortable and private.

CASE STUDY: United Kingdom – [Summer Holidays are for Fun not Pain Campaign](#)

In 2007, the Metropolitan Police Service (MPS) developed and implemented Project Azure to safeguard children and raise awareness about FGM, particularly in relation to the health implications for the girl and the legal implications for anyone assisting in the procedure. One of the Project's main goals is to tackle the prevalence of FGM during the summer holidays. During this period, families that practice FGM often take girls under their care abroad to perform the procedure or conduct the procedure at home, utilizing the holiday period as recovery time. The campaign "[Summer Holidays are for Fun not Pain](#)," implemented by MPS in conjunction with the London Children's Safeguarding Board (LSCB), the British Medical Association (BMA), Foundation for Women's Health, Research and Development (FORWARD), Africans United against Child Abuse, (AFRUCA) and the Agency for Culture and Change Management (ACCM), aims to inform the public of the practice and appeals to families and caregivers to protect and prevent children from undergoing FGM. (See: [Metropolitan Police Female Genital Mutilation Prevention Campaign](#) and [Metropolitan Police Service Specialist Crime](#))

See also: Public Education Section below.

Prosecutor protocols

- Legislation should mandate prosecutor protocols that are centered upon survivor safety and respectful investigation of FGM.
- Legislation should provide that these protocols allow for prosecution of offenders in the absence of the survivor, if necessary.
- Legislation should require prosecutor training in the use of physical evidence, expert witnesses, and other trial strategies to strengthen cases in which a victim is unavailable to testify.
- Legislation should require prosecutors to carefully consider all factors underlying a survivor's decision not to testify, including cultural and religious beliefs, before forcing a survivor to testify.
- Legislation should require prosecutors to prosecute offenders who violate protective orders or who threaten survivors or witnesses.
- Legislation should require prosecutors to avoid delays in completing the trial of the offender.
- Legislation should require prosecutors to receive training on the nature and impact of female genital mutilation, factors that may affect a survivor's willingness or ability to participate in a prosecution, effective prosecution strategies and approaches that support victim safety.
- Legislation should provide that prosecutors who do not pursue cases of FGM may be penalized.

(See: [Prosecutor Protocols, StopVAW website](#))

Regulations and administrative provisions

Legislation should provide that rules, procedures and protocols for police, social service and child protection professionals, medical providers and the judiciary be adopted within six months of passage of the legislation in order that it may be quickly implemented. Protocols should include methods for initiating dialogue about FGM at various stages of providing health services. In addition, protocols should provide guidelines to assess the level of risk for a girl. Such guidelines can help avoid arbitrary and discriminatory assumptions and decisions.

Health regulatory measures

- Drafters should mandate that standards for medical ethics clearly state that the practice of FGM violates professional standards.
- Practitioners who perform FGM should be subject to disciplinary proceedings and lose their license to practice medicine.
- Legislation should also require education to health professionals on how to treat patients, especially pregnant women, who have undergone FGM.
- Legislation should explicitly state that re-infibulation, the “re-closing” of a woman after child birth to her infibulated pre-delivery state, is illegal and should now be performed by anyone in the medical sector.

For example:

- **Denmark** – The National Board of Health declared that it was illegal for doctors to perform FGM because it was not medically necessary. The Danish Medical Women’s Association also provides health professionals with information about how to treat patients who have undergone FGM. (See: [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), Denmark)
- **Egypt** – A 1996 order from the Minister of Health and Population prohibited the practice of FGM for any non-medical purpose, including both public and private clinics. The decree stated:

[Order No. 261 of 8 July 1996 of the Minister of Health and Population:](#)

It is forbidden to perform circumcision on females either in hospitals or public or private clinics. The procedure can only be performed in cases of disease and when approved by the head of the obstetrics and gynecology department at the hospital, and upon the suggestion of the treating physician. Performance of this operation will be considered a violation of the laws governing the medical profession. Nor is this operation to be performed by non-physicians.

The decree was challenged but upheld by the highest administrative court and cannot be appealed. When issuing its ruling, the court declared that Islam does

not require or sanction the practice of FGM and that the practice is a violation of Egypt's Penal Code:

With this ruling everybody is banned from performing [FGM], even with the proven consent of the girl or her parents, except in cases of medical necessity, which must be determined by the director of the gynecology department in one of the hospitals. Otherwise, all those who do not comply will be subjected to criminal and administrative punishments.

See: [Equality Now, Women's Action, Vol. 8, No. 4, Feb. 1998](#)

In addition, in June 2007, the Ministry of Health of Egypt adopted decree no 271 outlawing FGM. The decree closed a loophole in the previous 1996 decree no 261, which prevented medical practitioners from performing FGM in governmental facilities and private clinics, but did not legally ban the performance of FGM in a home by a non-governmental medical practitioner. In addition, amendments were made to Child Law 12/1996 in June 2008, including the addition of a new clause to Article 7. The clause banned the practice of female genital mutilation and provided for a fine of 1,000-5,000 EGP or imprisonment for three months to two years for anyone convicted of performing FGM. (See: [Universal Periodic Review – Human Rights Council: UNICEF Inputs – Egypt, Para. 5.1.3.](#))

Medical-legal advisory body

Legislation should mandate the creation of an advisory body with members from the medical, mental health, and legal professions who can direct policy and monitor cases of FGM. This advisory body should be charged with the duty of identifying existing and new harmful practices to women which may be hidden in the community, and with developing a plan to educate, prevent, and prosecute with such harmful practices in mind. Legislation should mandate funds for the collection of sex-disaggregated data on FGM.

Immigration services

- Legislation in countries that receive immigrants from populations that regularly practice FGM should require that immigration services compile and present information on the harmful effects of FGM and the legal consequences of its practice to entering immigrants.
- For example, the United States Citizenship and Immigration Services is required by law to provide information about FGM and the legal consequences of practicing FGM in the United States to immigrants and non-immigrants entering the United States from countries where FGM is widely practiced: [8 USC §1374 \(2005\) Information regarding female genital mutilation](#) (See Immigration and Asylum: Promising Practice: United States – Mandatory information to immigrant and non-immigrant entrants regarding FGM section above; See also Public Education Section below.)

Broader coordinated policies

- No criminal legislation should be enacted without also mandating governmental and social awareness policies, professional training, and public education. These efforts should be coordinated to make them more effective.
- Legal consequences may deter the practice of FGM but because the practice is so entrenched in culture, religion and individual beliefs, communities as a whole must be convinced to eliminate the practice and change social behavior. Politicians, religious and community leaders, health and legal professionals, service providers, and other influential individuals or social groups must be recruited to participate in changing social norms. Tools should be created such as health facts, human rights principles, religious interpretations that are favorable to women, material and legal resources, literacy and organizational skills. Collaborations must be rooted in a human rights approach that focuses on the empowerment of women to be free from FGM and enjoy full reproductive and sexual rights and control.

Coordinated community response

- Legislation should provide funding for and require a coordinated response by local law enforcement, social service professionals, health care providers, religious and community leaders, immigration officials and immigrant community leaders.
- Legislation should require that local communities be involved in formal and informal outreach.
- Legislation should require a coordinated community response to identify times when girls are likely to be targeted for FGM, such as school or religious holidays, and create prevention initiatives for such times. Legislation should require training for teachers, churches and shelters on these prevention initiatives.

CASE STUDIES:

[Egypt's FGM-Free Village Model project](#)

[Egypt's FGM-Free Village Model](#) is an example of a national movement that involves the legal community, the media, doctors, religious leaders, youth groups and community members in a comprehensive effort to end FGM. The project, launched in 2003 by Egypt's National Council on Childhood and Motherhood (NCCM), aims to empower families to resist social pressure to have their daughters undergo FGM, with the eventual goal of entire villages publicly declaring their opposition to FGM. The Egyptian government allocated resources from several ministries to train and support health care providers, broadcast anti-FGM programs and infomercials on radio and TV, commit technical groups in the Ministry of Justice for anti-FGM amendments to the child law, and publish progressive and rights-based materials for religious leaders. NCCM also partnered with NGOs to implement its advocacy campaigns in 60 villages. By ensuring the participation of these various stakeholders in the process, NCCM was able to develop and deliver a powerful and unified anti-FGM message. The project later expanded to 120 villages. The mainstreaming of the anti-FGM messages yielded positive results as a program evaluation in the project villages showed a considerable change in people's perceptions regarding the universality of FGM and the social pressure surrounding the practice, their knowledge of the harmful consequences of FGM, their ability to retain information about the harmfulness of FGM, their willingness to discuss the issue, and their intentions as to performing FGM on their daughters. The importance of coordination between various sectors of society was confirmed by the finding that while women in villages not included in the project were also exposed to anti-FGM TV messages, they were less likely to re-evaluate the necessity of FGM than women residing in project villages who were exposed to a much broader campaign. The full evaluation report is available on the [UNDP website](#).

Kenya - Tsauro Ntomonik Initiative (TNI)

One example of effective collaboration between law enforcement and child protection agencies and an NGO is the partnership between the Tasaru Ntomonok Initiative (TNI), a community-based organization in Narok, Kenya, and the Child Welfare Department, the police, and the Justice Department. TNI developed community education and outreach programs designed to educate girls about their rights, and FGM and other abuses of their rights. TNI later opened a shelter for girls fleeing FGM and other abuses. When a girl arrives at a shelter, TNI notifies the Child Welfare Department which makes a child protection inquiry and begins an intervention with the family. Girls may be reconciled with and returned to their families if the parents renounce their intent to have FGM performed on their child; however, many cases proceed to children's court so that special protective orders may be obtained. Girls whose parents insist on FGM are kept at the shelter. The police and the District Magistrate acknowledge that without this collaboration with TNI, it would be difficult to protect girls at risk of FGM. (See: Nairobi Regional Workshop p. 25-28)

CASE STUDY: Kenya - The FRONTIERS Project - [A Religious Oriented Approach to Addressing Female Genital Mutilation/ Cutting among the Somali Community of Wajir, Kenya:](#)

The FRONTIERS project of the Population Council developed a religious oriented approach to engage with and educate the Somali community in Kenya about the harmful effects of FGM, after background research in parts of Kenya revealed that FGM in those regions was firmly linked with religious beliefs, particularly the Islamic requirements of modesty and chastity. The strategy was designed to encourage critical examination of the religious justifications for FGM and build consensus among religious leaders about the Islamic position on FGM. This approach recognized that religious justifications were the most powerful motivator for those practicing FGM, outweighing all evidence of the harms caused by FGM, and the involvement of religious scholars was therefore deemed necessary because of their ability to influence public opinion. The project brought together religious scholars from different parts of Kenya for small group discussions. Trainings were organized to present FGM as a practice that was inconsistent with Islamic principles. The community members reached through these trainings included traditional birth attendants, school teachers, and police officers. Through these discussion groups and trainings, the project was able to effect a change in community views regarding the relationship of FGM to Islam, with many individuals and scholars publicly declaring their opposition to the practice.

Public education

Governments must provide resources to inform the public and communities which practice FGM about the harmful consequences and potential liability of practicing FGM.

Information should focus on:

- the harmful physical and psychological impact of FGM on women, girls and the community;
- the history and purpose of FGM;
- the promotion of human rights and how FGM violates human rights;
- involving the entire community in developing ways to meet the needs of women and girls.

Public education programs should be tailored to the needs of immigrant communities which practice FGM, keeping in mind language barriers and immigration concerns. Governments should rely on NGOs, local religious and community leaders, and health care and service providers to collect and disseminate information about the harms and consequences of FGM to the community widely.

Media

Privately owned and community-based media should be encouraged to present information on the harmful consequences of FGM, the right of women and girls to be free from FGM, and the legal consequences of practicing FGM.

Access to health education and services

Health education is a critical strategy for eliminating the practice of FGM. Governments have a duty to ensure health care and specifically to undertake educational efforts at the community level to inform women of the health risks of FGM. Education and treatment should also address the healthcare needs of women and girls who have already been subjected to FGM and are suffering from complications.

- Drafters should require governments to provide access to reproductive health services. Such services can provide valuable access to women to educate them on the harmful consequences of FGM. It will also provide much needed attention to women who have already undergone FGM and need medical attention during pregnancy and child birth.
- Legislation should provide for public education and public awareness campaigns about FGM, child protection and legislative options.
- Legislation should require funding for public education, public awareness, and prevention campaigns about FGM and its adverse health consequences.
- Legislation should require that all persons involved are targeted for education, including parents, teachers, health professionals, social workers, law enforcement, and the judiciary. (See: [European Parliament working document on FGM, 19.9.2008](#), from the Committee on Women's Rights and Gender Equality (recommending that Member States be encouraged to raise awareness on the part of social workers, teachers, police forces, health professionals, etc., so that these actors will be able to recognize cases of FGM); On awareness-raising for men and boys, see: [UNFPA and the Gambia Foundation for Research on Women's Health, Productivity and Development \(BAFROW\)](#) (UNFPA supported the work of BAFROW, which ran a reproductive health clinic and also raised awareness through radio programs on which husbands discussed the detrimental effects of FGM))
- Legislation should require that public awareness campaigns involve the media to inform and educate the public on the harmful effects of FGM and FGM medicalization.
- Legislation should require that public awareness campaigns contain components directed at educating non-literate members of the community.
- Legislation should require that public awareness campaigns target parliamentarians and involve them in the elimination efforts.

EXAMPLE: [Italy, Legge Consolo \(Consolo Law\), Law No. 7, 2006](#)

The following statute from Italy contains some of these legislative provisions with regard to addressing the practice of FGM in Italy.

[Law of Italy, No. 7, 2006](#), “Provisions Concerning the Prevention and Prohibition of the Practice of Female Genital Mutilation” (unofficial translation):

Article 3: Information Campaigns

1. *In order to prevent and combat practices [criminalized under] Article 583-bis of the Penal Code [FGM], the Minister for Equal Opportunity, in agreement with the Ministers of Health, Education, University and Research, Work and Social Policies, Foreign Affairs and Interior and with the Standing Conference on Relations between State, Regions and Provinces of Trento and Bolzano, prepares special programs directed to:*

a) *develop information campaigns for immigrants from countries where [FGM] is carried out ...at the time of granting the visa at the Italian consulates and their arrival to the Italian border, directed to increase awareness of the fundamental rights of individuals, in particular women and girls, and the ban in force Italy on the practice of female genital mutilation;*

b) *Promote awareness-raising, with participation of voluntary organizations, non-profit organizations, healthcare facilities, particularly centers of excellence recognized by the World Health Organization, and with the communities of immigrants from countries where FGM is practiced to develop socio-cultural integration while respecting the fundamental rights of persons, in particular women and girls;*

c) *Organize informational courses for women [who have been infibulated and are] pregnant, for sound preparation for childbirth;*

d) *Promote appropriate training programs for teachers in primary schools, including through figures with acknowledged expertise in the field of cultural mediation, for help to prevent female genital mutilation, with the involvement of parents of girls and boys immigrants, and the class to spread knowledge of the rights of women and girls;*

e) *Promote in healthcare facilities and social services the monitoring of past cases already known and recognized locally.*

2. *For the implementation of this article spending is authorized [in the amount of] 2 million euros annually from 2005.*

Article 4: Training of health personnel

1. *The Minister of Health, in consultation with the Ministers of Education, University and Research and for Equal Opportunity and Permanent Conference on Relations Between State, Regions and Autonomous Provinces of Trento and Bolzano, [shall] issue, within three months of the date of entry into force of this Act, guidelines for health professionals as well as other professionals working with communities of immigrants from countries where [FGM is] carried out...to create an activity of prevention, assistance and rehabilitation of women and girls already subjected to [FGM].*

2. *For the implementation of this article spending is authorized [in the amount of] 2.5 million euros annually from 2005.*

CASE STUDY: United States, Minnesota

Minnesota law also contains some of the suggested statutory language for education and outreach.

[Minn. Stat. § 144.3872](#). Female Genital Mutilation; Education and Outreach

The commissioner of health shall carry out appropriate education, prevention, and outreach activities in communities that traditionally practice female circumcision, excision, or infibulation to inform people in those communities about the health risks and emotional trauma inflicted by those practices and to inform them and the medical community of the criminal penalties contained in section 609.2245 [statute criminalizing FGM]. The commissioner shall work with culturally appropriate groups to obtain private funds to help finance these prevention and outreach activities.

CASE STUDIES - Female Genital Mutilation Awareness and Elimination Projects

- [*Impact of a Female Genital Cutting Elimination Program in Eastern Nigeria:*](#)
The Health Communication Partnership of Maryland, United States, in collaboration with several Nigerian NGOs, designed an FGM awareness project intended to foster public dialogue and encourage abandonment of FGM in three regions of Nigeria. Statewide program activities included radio phone-in programs, newspaper feature articles, and celebration of Zero Tolerance of FGM Day. In addition, in three regions with high prevalence of FGM, program staff met with community leaders and arranged public viewings of “Uncut,” an anti-FGM video, to stimulate community dialogue. In each of these communities, one hamlet was selected for further community mobilization activities, particularly the formation and capacity-building of core groups in each hamlet to address its own health concerns, including FGM-related health problems. Evaluation of the program showed that those who had been exposed to program activities had a better understanding of the harmful effects of FGM. The program also led to a decline in the level of individual approval of FGM and prevalence of the belief that FGM was a religious requirement.
- [*Final Evaluation of Awash Female Genital Cutting Elimination Project:*](#)
The Awash Female Genitalia Cutting (FGC) Elimination Project began in January 2003 as a follow-up to CARE Awash’s primary health care project in the Afar Region of Ethiopia, an area with a high prevalence of FGM and various health problems and low level of knowledge about disease prevention and family planning. The objectives of the program were to disseminate quality information on FGM elimination, reproductive health and family planning, HIV/AIDS, and primary health care; advocate for the elimination of FGM in any form; and create and strengthen sustainable community-based health systems. To achieve these ends, the project implemented a variety of activities in rural areas, including airing a radio program in the Afar language. Advocacy workshops were also conducted at the regional level to reach people outside the project area.

A program evaluation found that the project had resulted in more open public discussion of the damaging effects of FGM and other harmful traditional practices. Many religious leaders had condemned the practice of FGM and declared it inconsistent with Islamic teachings. The program’s activities had also resulted in higher level of awareness of the negative consequences of FGM as well as other reproductive health issues

- [*The Tostan Program - Evaluation of a Community Based Education Program in Senegal*, 2004.](#)

[TOSTAN](#), a Senegal-based NGO, implemented a basic education program in the Kolda Region of Senegal, which has a high prevalence of FGM. The program aimed to enable its participants to become self-reliant in finding solutions for themselves, and consisted of four modules: hygiene, problem solving, women's health, and human rights. A total of 2,339 women and 221 men participated in the program. Two-hour classes on these issues were held three times a week, with one facilitator for every 30 participants. Participants also engaged in community mobilization activities. 300 villages took part in a public declaration to abandon FGM. Traditional and religious leaders and the elected politicians of the area were informed about project activities and facilitators and supervisors were selected from the communities that participate in the program. Evaluation of the program found that among program participants, fewer women believed that FGM was necessary, and fewer women were willing to have their daughters undergo FGM. Even men and women who did not attend the classes became more knowledgeable about the issues discussed as a result of interaction with program participants. Among women directly and indirectly exposed to the program, the prevalence of FGM reported among young daughters declined significantly.

Training of professionals

- Legislation should provide that health professionals, education and social service providers, youth professionals, police, prosecutors, and judicial officers receive training on the issue of FGM as a part of the core curriculum.
- Legislation should provide that health professionals receive regular training on FGM prevention, care for victims of FGM, and the abolition of FGM medicalization. Legislation should mandate the allocation of funds for this purpose.
- Legislation should provide that law enforcement, immigration officials, and others who may come in contact with immigrant populations that practice FGM, receive training and culturally appropriate educational programs developed by community-based organizations that provide insight into the situation of such refugee and immigrant groups and the factors that contribute to the continued practice of FGM.

CASE STUDY: [Final Report of the DAPHNE Project No. 97/2/096, "Towards a Consensus on Female Genital Mutilation in the European Union"](#)

The Daphne Project on Female Genital Mutilation in Europe, carried out by the International Centre for Reproductive Health, Defence for Children International section, The Netherlands and the Royal Tropical Institute of Amsterdam, sought to study the legal, medical and socio-cultural aspects of FGM in Europe and the resources available to prepare a European strategy for combating FGM. The project inventoried existing FGM-related resources and legislation in European Union countries, and issued recommendations to strengthen efforts to combat FGM on multiple levels. The project report recommended, *inter alia*, that:

Education for health professionals should be carried out at different levels using varied methodologies and materials:

-Local hospitals and primary care level (general practitioners and school health services): guidelines, study days, in-service training, information provision through hospital and university libraries;

-Academic level: inclusion of FGM as a subject in all curricula for medical and para-medical courses, journals, textbooks;

- National level: guidelines on the socio-cultural, medical and legal aspects of FGM for all medical and para-medical professional organizations as well as for European (para)-medical professionals working in countries where FGM is performed;

- European level: practical courses for health care professionals

Regional, national and international cooperation protocols

Legislation should require that law enforcement and other state officials such as child protection, migration officials, and the health sector develop protocols to ensure coordination among these authorities with the aim of protecting girls who may travel to a country for purposes of FGM, to facilitate the provision of evidence for extraterritorial prosecutions, and to ensure that no cases go unreported. (See: [Leye-Sabbe](#) Expert paper, p. 11)

Promising Practice: [END FGM – European Campaign](#)

Europe's END FGM campaign is an example of regional cooperation. The campaign, led by Amnesty International Ireland, works in partnership with twelve organizations in EU Member States and, using a human rights-based approach, advocates that the elimination of FGM be made a high priority. The twelve campaign partners have expertise in the issue of FGM and work directly with women and girls affected by FGM, communities that practice FGM, and religious leaders. They also lobby their national governments to take steps towards the elimination of FGM. The END FGM campaign identifies gaps in the existing EU approach to FGM and opportunities for further cooperation, and recommends specific measures to be taken by EU institutions. For example, the campaign urges EU institutions to "encourage Europol... to, in accordance with the 2009 European Parliament resolution on FGM, 'coordinate a meeting of European police forces with a view to intensify the measures to combat FGM, tackling the issues related to the low reporting rate and the difficulty of finding evidence and testimonies, and taking effective steps to prosecute offenders'..." The campaign thus ensures that the anti-FGM efforts of various EU bodies and Member States are coherent and coordinated in their approach.

Partnership with international organizations

Legislation should require the state to partner with major agencies which enforce human rights and gender equality and health and children's rights, such as the European Union Agency for Fundamental Rights and the European Institute for Gender Equality and the WHO.

Resources

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“Honour” Crimes

Throughout this knowledge asset, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a promising practice.

Some of the laws cited herein may contain provisions which authorize the death penalty. In light of the United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

Overview

General Principles for Laws on Honour Crimes and Killings

Legal Reform in Civil, Customary, Criminal and Asylum Laws

Roles and Responsibilities

Victim Protection

Overview

Core recommended elements of legislation on “honour” crimes

- GUARANTEES of equality between women and men, including within matters pertaining to family relations and sexuality.
- PROHIBITION against discrimination against women and girls and modification of customs, practices and social and cultural patterns that discriminate against women and girls
- INTEGRATION of crimes committed in the name of “honour” [hereinafter, “honour” crimes] within a domestic violence legal framework
- ELIMINATION of mitigation in sentencing or reduced penalties for “honour” crimes, adultery, domestic femicides and crimes of passion committed against female family members
- ELIMINATION of criminal defenses based on “honour” or provocation based on adultery
- INCREASE penalties making “honour” killings an aggravated murder or first-degree murder
- TRAININGS for the legal sector
- PUBLIC awareness initiatives about women’s human rights and applicable legislation
- PROVISION of a civil order for protection remedy for victims of domestic violence and “honour” crimes
- DATA collection and monitoring of the multi-sectoral response to “honour” crimes

(See: [Law and Policy](#), Stop VAW, Advocates for Human Rights)

Sources of international law related to “honour” crimes and killings

United Nations:

A number of international instruments set standards relevant to the issue of “honour” crimes. Standards that address violence against women in general guarantee equality for women and prohibit discrimination.

- The [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) requires states to grant women equality before the law, including equal legal capacity and ability to exercise that capacity in civil matters (Art. 15). It requires states to provide legal protection for women’s rights on an equal basis with men and to guarantee the effective protection of women against discrimination through competent national courts (Art. 2(c)). The [Convention on the Elimination of All Forms of Discrimination against Women](#) requires States Parties to repeal all penal provisions that discriminate against women (Art. 2(g)) and adopt legislative and other measures prohibiting discrimination against women (Art. 2(b)). (See also of the [International Covenant on Civil and Political Rights](#) (Article 26)).
- Under [CEDAW](#), states are obligated to take appropriate measures to modify social and cultural patterns that discriminate against women (Art. 5(a)). The Committee on the Elimination of All Forms of Discrimination against Women [General Recommendation 19](#) states that “[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” CEDAW has also expressed concern over practices that uphold culture over eliminating discrimination. In its [1999 Concluding Observations on Nepal’s periodic report](#), CEDAW expressed its concern over the Supreme Court prioritizing the preservation of culture and tradition when interpreting discriminatory laws. Also, the Human Rights Committee has drawn attention to minority rights that infringe upon the rights of women. In [General Comment 28](#), it stated that those “rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights, including the right to equal protection of the law” (¶ 32).
- Specifically, with regard to “honour” crimes and killings, CEDAW [General Recommendation 19](#) states that measures necessary to overcome family violence include “[l]egislation to remove the defence of honour in regard to the assault or murder of a female family member” (¶ 24(r)(ii)). The United Nations General Assembly Resolution 55/66 “Working towards the elimination of crimes against women committed in the name of honour,” 2001, calls upon Member

States to intensify legislative, educational, social and other efforts to prevent and eliminate “honour”-based crimes, including by involving public opinion leaders, educators, religious leaders, chiefs, traditional leaders and the media in public education; encourage, support and implement measures to increase the understanding of legal and health professionals of the causes and consequences of “honour”-based violence; establish, strengthen or facilitate support services, such as appropriate protection, safe shelter, counselling, legal aid, rehabilitation and reintegration into society, for actual and potential victims; create, strengthen or facilitate institutional mechanisms to facilitate safe and confidential reporting for victims and others to report “honour” crimes, and; gather and disseminate data on “honour”-based crimes (¶4). United Nations General Assembly Resolution A/RES/57/179 [Working towards the elimination of crimes against women committed in the name of honour \(2003\)](#) and United Nations General Assembly Resolution A/RES/59/165, [Working towards the elimination of crimes against women committed in the name of honour \(2005\)](#) both call upon Member States to take similar actions to eliminate “honour”-based violence. They also call upon states to investigate promptly and thoroughly, prosecute effectively and document “honour” crimes and punish the perpetrators; increase awareness-raising about the responsibility of men to promote gender equality and facilitate change to eliminate gender stereotypes; support the work of civil society working on this issue and strengthen cooperation with intergovernmental and non-governmental organizations, and; encourage the media to raise awareness on the issue. The [Human Rights Committee’s General Comment No. 28: Equality of rights between men and women](#) (Article 3) states that: “...The commission of so-called “honour crimes” which remain unpunished constitutes a serious violation of the Covenant and in particular of articles 6, 14 and 26. Laws which impose more severe penalties on women than on men for adultery or other offences, also violate the requirement of equal treatment” (¶ 31).

- Other instruments provide guidance on the rights of victims and the roles of various actors. The [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) sets forth standards on the rights of victims, which includes access to justice and fair treatment, as well as standards on restitution, assistance and compensation. Other international documents also provide standards for legal actors, including judges, lawyers, prosecutors and police. (See: [Basic Principles on the Independence of the Judiciary](#); [Basic Principles on the Role of Lawyers](#); [Guidelines on the Role of Prosecutors](#); [Code of Conduct for Law Enforcement Officials](#))

Africa:

The [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) similarly requires States Parties to adopt legal measures to prohibit and curb discrimination against women. Both treaties obligate States Parties to provide for equality of women and men in their constitutions and other legal instruments. In particular, Article 5 calls for States Parties to take all necessary and legislative

measures to eliminate harmful traditional practices, including through public awareness initiatives, legal prohibitions and sanctions against such practices, support to victims, and protection of women at-risk for harmful traditional practices. The [African Charter on the Rights and Welfare of the Child](#) requires States Parties to take all appropriate measures to eliminate harmful and social practices that affect a child's "welfare, dignity, normal growth and development," including customs and practices that are prejudicial to the health or life of the child or discriminatory on the grounds of sex or other status (Article 21).

Europe:

- Council of Europe [Parliamentary Assembly Resolution 1327](#), So-called "honour crimes," 2003. The European Union's Parliamentary Assembly's Resolution 1327 (2003) on honour crimes sets out clear standards for its Member States. The resolution calls for Member States to amend immigration laws to allow women at risk of an "honour" crime to remain in the country; enforce the laws to punish all "honour" crimes and treat complaints of violence as serious criminal matters; ensure the effective and sensitive investigation and prosecution of "honour" crimes; exclude "honour" as a mitigating factor or justifiable motive; take steps toward implementation of such legislation and train policymakers, law enforcement and the judiciary on the topic, and; strengthen female representation within the legal sector.
- Council of Europe Parliamentary Assembly Recommendation 1881, [Urgent need to combat so-called "honour crimes,"](#) 2009 calls for the Committee of Ministers to devise a comprehensive strategy to put a stop to so-called "honour crimes."
- Council of Europe [Parliamentary Assembly Resolution 1681](#), Urgent need to combat so-called "honour crimes," 2009 called upon Member States to develop national plans of action on violence against women, conduct education and training for all, engage in dialogue with religious leaders to facilitate cooperation, conduct awareness-raising campaigns across each sector and among the population, establish a helpline, establish a database for statistics gathering, train police and judges on "honour"-based violence, and support non-governmental organizations working on "honour" crimes and with immigrant communities.
- Council of Europe [Parliamentary Assembly Recommendation 1450](#), Violence against Women in Europe, 2000 generally addresses violence against women and makes recommendations to the Committee of Ministers and Member States to take certain measures.
- Council of Europe, [Parliamentary Assembly Recommendation 1582](#), Domestic Violence against Women, 2002 calls upon Member States to take certain measures to combat domestic violence.
- The [Stockholm Platform for Action to Combat Honour Related Violence in Europe](#), 7-8 October 2004, sets forth several recommendations for EU Member States and the EU. Among them, it recommends the strengthening of victim support and rehabilitation services, including social, health, legal, educational

support, adequate safe housing, shelters, support lines, counseling services and information campaigns. It recommends coordination among the European Police and other regional institutions, including legislation to protect European citizens at risk for “honour” crimes or killings in third countries and for the prosecution of perpetrators who flee to or commit these crimes in third countries. It also recommends gender persecution as a basis for asylum (p.108-09).

Americas:

The [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#) (Belem do Para) affirms the right of women to be free from violence and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence. Article 6(b) affirms that a woman’s right to be free from violence includes their right “to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.”

Preamble

The legislative preamble sets the stage for the entire piece of legislation. The following elements are important to a strong and inclusive legislative preamble on “honour” crimes:

- IT acknowledges that the root cause of violence against women and girls is the subordinate status of women in society. (See: DEVAW, CEDAW, General Recommendation 12, General Recommendation 19, [UN Secretary-General’s study on violence against women](#), and [Other Causes and Complicating Factors](#), and [The International Framework, Stop VAW](#), the Advocates for Human Rights):
- IT defines discrimination against women. ([United Nations Handbook for legislation against women](#), 3.1.1)
- IT protects all women and girls. ([United Nations Handbook for legislation against women](#), 3.1.3)
- IT states that governments are obligated to take all appropriate measures “[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (CEDAW, Art. 5(a))
- IT reaffirms that everyone has the right to liberty and security of person (ICCPR, Art. 9(1)), as well as the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment ([CAT](#))
- IT excludes customary or religious justifications for violence against women. [United Nations Handbook for legislation against women](#), 3.1.5 and states that

honour crimes are “incompatible with all religious and cultural values” (See General Assembly, 2004, [Working towards the elimination of crimes against women and girls committed in the name of honour](#), A/C.3/59/L.25, p. 2; the [Report of the Special Rapporteur on violence against women, its causes and consequences, a framework for model legislation on domestic violence](#), 1996, E/CN.4/1996/53/Add.2)

- IT states that the main principles of the legislation are to promote safety for the complainant/survivor and accountability for the perpetrator. (See: [Drafting Domestic Violence](#), and [United Nations Model Legislation, Stop VAW](#), the Advocates for Human Rights)
- IT states that governments are obligated to exercise due diligence and prevent, investigate, and punish “honour” crimes, as well as provide protection to victims. See UN Resolution [Working towards the elimination of crimes against women and girls committed in the name of honour](#)
- IT emphasizes that there is no “honour” in “honour” crimes and killings.

General principles for laws on honour crimes and killings

Defining “honour” crimes and “honour” killings

Laws should acknowledge “honour” crimes and “honour” killings are a form of violence against women and girls. Drafters are encouraged to use an expansive definition for “honour” crimes and killings. A definition must be broad enough to encompass “honour”-based violence in all its forms, such as murder, driving to suicide, rape, gang rape, torture, assault, virginity testing, kidnapping, forced marriage, forced eviction, stove burnings, acid attacks and maiming. Legislation should clarify that the detailed list should not serve to exclude from sanctions some behavior that is not included.

Defining “Honour”

Drafters should use the phrase “so-called honour” or use quotation marks around “honour” to imply the absence of “honour” in these crimes. Drafters should be aware of the complexities in defining “honour”-related violence. Laws that use the term “honour” risk reinforcing discriminatory misperceptions that women and girls embody the “honour” of the male and community and that there is “honour” in acts of violence against women. Additionally, using this term masks political, social and economic motivations that may contribute to “honour”-related violence. Nevertheless, drafters are urged to use the term “honour” when describing these crimes against women and girls. Using the term “honour,” as opposed to a more ambiguous or restrictive term such as “custom” or “tradition,” will properly identify “honour” crimes as such and prevent loopholes that allow perpetrators to escape accountability. Laws should clearly state there is no “honour” in or justification for “honour”-based violence.

CASE STUDY: [Turkey's Penal Code](#) prohibits aggravated homicide, which includes killings in the name of "custom" (Article 82(k)). Labeling aggravated homicides as a crime of custom, however, has created a loophole for "honour" killings. Offenders may argue that crimes of custom or tradition are restricted to certain areas or perpetrated only by certain groups, thus excluding other honour killings from this definition. The Turkish First Criminal Supreme Court has so interpreted this provision, by ruling that the applicable article applied only to custom killings, whereas the case at hand was an "honour" killing because it did not involve a formal family decision. Furthermore, the term "custom" fails to acknowledge the prevalent discrimination against women that motivates killing in the name of "honour." (See Leylâ Pervizat, [Tackling Honour in the Aftermath with a Good Practice](#), May 11, 2009, U.N. Doc. EGM/GPLHP/2009/EP.02, p. 8). Since January 2009, however, the Turkish First Criminal Supreme Court has found that a formal family decision is no longer required for the offense to constitute a custom killing. Nevertheless, the term "custom" fails to acknowledge the prevalent discrimination against women that motivates killings in the name of "honour," and is ambiguous. Since January 2009, however, the Turkish First Criminal Supreme Court has found that a formal family decision is no longer required for the offense to constitute a custom killing. (See: Communication from Asuman Aytekin Inceoglu, Bilgi University, to Rosalyn Park (May 17, 2010) (on file with The Advocates for Human Rights))

A definition of "honour"-based violence should reflect three basic elements: 1) control over a woman's behavior; 2) a male's feeling of shame over his loss of control of the behavior, and; 3) community or familial involvement in augmenting and addressing this shame. (See: [Family Killing Fields: Honor Rationales in the Murder of Women](#) Baker et al. VIOLENCE AGAINST WOMEN.1999; 5: 164-184). Laws should describe "honour" crimes and killings as violence stemming from a perception to safeguard family "honour", which in turn is embodied in female behavior that challenges men's control over them; it includes sexual, familial and social roles and expectations assigned to women and as prescribed by traditional ideology. Behaviors include: adultery, extramarital sex, premarital relationships that may or may not include sexual relations, rape and dating someone unacceptable to the family, violations of restrictions imposed on women and girls' dress, employment or educational opportunities, social lifestyle, or freedom of movement. Drafters should be cautious about explicitly listing types of behaviors in the definition, as listing specific forms may result in excluding some behavior that is not on the list from sanctions.

(See: [Report on Violence against Women in the Family, Special Rapporteur on violence against women, its causes and consequences, 1999](#), ¶ 18.)

CASE STUDIES:

Drafters may wish to look to international instruments for guidance in defining “honour” crimes and killings:

Council of Europe:

- “Honour” crimes defined as a “crime that is, or has been, justified or explained (or mitigated) by the perpetrator of that crime on the grounds that it was committed as a consequence of the need to defend or protect the honour of the family.” (See: [2003 report](#), rapporteur of the Council of Europe Committee on Equal Opportunities for Women and Men, ¶ 1)
- “Honour” killings defined as “the murder of a woman by a close family member or partner as a result of (suspected or alleged) shame being brought on a family by the action (a suspicion or allegation will be enough) of the woman” (¶ 10). See: [2003 report](#), rapporteur of the Council of Europe Committee on Equal Opportunities for Women and Men.
- “Honour”-based violence defined as that “exercised in the name of traditional codes of honour. Where the “honour” of the family is at stake, according to the family, and the woman suffers the consequences, it is proper to speak of a so-called “honour crime.” This is a more expansive definition that takes into account the collective and community nature that condones “honour”-based violence. (See: [Explanatory Memorandum by Mr Austin, Rapporteur](#), The Urgent Need to Combat So-called “Honour Crimes,” Council of Europe Parliamentary Assembly, 2009, ¶ C.I.1.)

Pakistan’s Criminal Code (2005), Section 299(ii) defines “honour” crime as an “offence committed in the name or on the pretext of honour” means an offence committed in the name or on the pretext of karo kari sivah kari or similar other customs or practices.” “Karo kari” and “sivah kari” are the same custom called by different names in different parts of the country. “Karo kari” means literally “black man black woman,” and in Sindh, the term encompasses the practice of labeling a woman as “kari” and killing her for alleged violations of “honour”; sometimes the “karo” or “black man” is also killed. By labeling the murder “karo kari,” the perpetrator expects to be forgiven by the victim’s relatives. In Balochistan, the same custom is known as “sivah kari,” or just “black woman.” The practice of “karo kari” has expanded in recent years across Pakistan, growing beyond its original origins as a Baloch and Pashtun tribal custom, something the law appears to acknowledge by using the term “or similar other customs or practices.” In the Northwest Frontier Province (NWFP) it is called “tor tora;” in Punjab “kala kali.” “Karo kari” is generally acknowledged as the shorthand term for premeditated “honour” killings in Pakistan. Defining “honour” crimes by reference to these very specific customs could exclude other types of acts or behaviour that do not explicitly fall within that definition from prosecution. (See Amnesty International, [Pakistan: Violence Against Women in the Name of Honour](#) (1999); Expert Paper prepared by Shahnaz Bokhari, [Good Practices in Legislation to Address Harmful Practices Against Women in Pakistan](#), United Nations Division for the Advancement of Women, May 2009.)

- Drafters should be cautious about legislative vagueness that could allow an interpretation that associates crimes of “honour” with crimes of passion, thus allowing the perpetrator to benefit from a crimes of passion defense. Laws should make clear that crimes committed in the name of “honour” do not constitute crimes of passion or crimes committed in a fit of fury for defense purposes. Laws should state that “honour” crimes and “honour” killings are an act of violence against women and girls, and governments are expected to exercise due diligence in preventing and punishing these acts.

Example: A failure to clearly differentiate between crimes of “honour” and crimes of passion can cause potential problems in the application and enforcement of the law. For example, in United Nations Resolution 55/68, the General Assembly expressed concern over violence against women, including “crimes committed in the name of honour” and “crimes committed in the name of passion” (¶ 1). The potential risk was demonstrated when one representative questioned how states could be expected to exercise due diligence in preventing crimes committed in a fit of fury. Regardless, the government must exercise due diligence for all acts of violence against women and girls.

National plan of action to prevent and punish “honour” crimes

- Drafters should consider developing a national plan of action to combat “honour” crimes. Guidance can be found in the [Beijing Platform for Action](#), which calls upon states to promulgate national plans of action. The Beijing Platform for Action recommends involving broad participation in the plan by national bodies that work on the advancement of women, the private sector, and other relevant institutions, including “legislative bodies, academic and research institutions, professional associations, trade unions, cooperatives, local community groups, non-governmental organizations, including women’s organizations and feminist groups, the media, religious groups, youth organizations and cultural groups, as well as financial and non-profit organizations” (¶¶ 294-95). The platform also emphasizes the importance of involving actors at the highest political levels, ensuring appropriate staffing and protocols are in place within ministries, having stakeholders review their goals, programs, and procedures within the framework of the plan, and engaging the media and public education to promote awareness of the plan (¶ 296). The plan should also address the roles and responsibilities of actors charged with implementing the plan. In this case, drafters should seek to engage and charge a wide range of actors as machinery for implementation. Relevant institutions include police, prosecutors, the judiciary, social services, children’s and juvenile authorities, equal opportunities offices, crime victim units, education, public health, prison and probationary authorities, disability agencies, administrative boards, immigration bureaus, cultural, religious, immigrant and ethnic community liaison offices, welfare, housing, religious groups, customary and local officials, offices working on issues related to women and girls, and civil society.

- Drafters should also refer to the Council of Europe’s Committee of Ministers draft strategy against “honour” crimes for guidance. The strategy aims to eliminate all forms of legislative justifications for mitigating or absolving criminal accountability for perpetrators who commit “honour” crimes; reiterates that no religion supports “honour” crimes; seeks to eradicate societal attitudes that condone “honour” crimes; provides for research to identify and address the root causes, and; supports the establishment of an international network dedicated to combating “honour” crimes. (See: [The urgent need to combat so-called “honour crimes.”](#) CoE Recommendation 1881, 2009, ¶ 2)
- Drafters should mainstream women and girls’ human rights across diverse agency policies. They should ensure that other national development plans and poverty reduction strategies incorporate the relevant human rights standards related to women and girls into such programming and budgets. (See: [Theme: Addressing Gender Equality: A Persistent Challenge for Africa](#), Joint AU/ECA Conference of Ministers of Gender and Women’s Affairs, Aug. 25-29, 2008, p. 3)

Promising Practices:

Jordan has established units in government departments to protect women and children. Its social services bureau monitors cases, provides legal advice to women victims or women at-risk, and assists in victims’ reintegration. (See: U.N. Doc. A/57/169, p. 5)

Sweden has developed an [Action Plan for Combating Men’s Violence against Women, Violence and Oppression in the Name of Honour and Violence in Same-sex Relationships](#). The plan focuses on six main strategies:

- increased protection and support to victims of violence
- greater emphasis on preventive work
- higher standards and greater efficiency in the judicial system
- better measures targeting violent offenders
- increased cooperation and coordination
- enhanced knowledge and competence

It outlines several measures pertaining to each of the six strategies. In developing the plan, the Swedish Government adopted an overarching policy approach that uses a victim-centered approach and draws upon research. Its policy “overrid[es] ministry and agency lines, with the perspective of those at risk as the point of departure and based on the knowledge available on the areas concerned.”

Legal reform in civil, customary, criminal and asylum laws

Elimination of discriminatory laws

- Drafters should seek to eliminate discrimination against women both by public and private actors in all areas. Drafters should eliminate laws that discriminate against women and girls on their face and in practice. Drafters should amend or repeal de jure discriminatory laws that: impose disparate punishments and defenses for men and women; impose different standards or requirements for men and women with regard to adultery, extramarital sex, marriage, divorce and other behaviors; allow for or require virginity testing, and; deny personal civil status for women. Drafters should also repeal provisions that allow for the reduction of sentences where the perpetrator has discovered his wife has committed adultery. (See: [Human Rights Committee General Comment No. 28](#) (¶ 31 stating: “Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment”)) **CASE STUDY:** [Egypt’s Penal Code punishes a man](#) who commits adultery in the marital residence (Article 237), but punishes a woman who commits adultery in or outside of the marital home (Article 277). (See: Fatma Khafagy, [Honour Killing in Egypt](#), 2005, p. 4) Drafters should decriminalize adultery and repeal this and any similar laws that impose disparate standards or punishments for women and men.

For example, Syria reduces the sentence where the perpetrator kills or injures his spouse, ascendants, descendants or sister for adultery, illegitimate sexual acts or having found them in a “suspicious” circumstance with another person. Article 192 grants judicial discretion to reduce the sentence where the judge finds the perpetrator’s motive was “honourable.” Drafters should repeal provisions that use ambiguous language and confer broad judicial discretion in reducing the penalty in “honour” killings.

SYRIA

Article 548 Penal Code 1949 (as amended 1953):

1. He who surprises his spouse or one of his ascendants or descendants or his sister committing adultery or illegitimate sexual acts with another person and he unintentionally kills or injures one or both of them benefits from an exemption of penalty.

*2. The perpetrator of the murder or injury shall benefit from a reduction in penalty if he surprises his spouse or one of his ascendants, descendants or sister in a "suspicious" situation with another.**

** hala muraiba*

Article 242:

He who commits a crime in a state of great anger resulting from a wrongful and dangerous act on the part of the victim shall be liable to a lesser penalty.

Article 192:

If the judge establishes that the motive [for the crime] was honourable, he will apply the following penalties: in place of the death penalty, life imprisonment; in place of hard labour for life, life imprisonment or for 15 years....

(see Abu Odeh 164-6)

(See: Lynn Welchman, [Extracted provisions from the penal codes of Arab states relevant to 'crimes of honour'](#); See: Decriminalization of Adultery)

- In addition, drafters should review legislation for discriminatory impact on women and girls. Specifically, drafters should scrutinize crimes of passion, provocation defenses, and adultery provisions that are gender-neutral but discriminate against women and girls in practice. Drafters should amend laws so as to eliminate discriminatory impact on women and girls, and they should limit defenses for crimes of passion or provocation by barring their application to adultery, cases involving “honour”, and domestic femicides. See: Section on Defenses.

Addressing customary laws and practices that conflict with formal laws

- “Honour” crimes are rooted in cultural, not religious, practices. (See: [Council of Europe General Assembly](#) (¶ 4)) Drafters should take all appropriate measures to ensure that customary practices and laws do not authorize or condone “honour” crimes or “honour” killings.
- Laws should resolve conflicts between customary and formal laws in a manner that respects the survivor’s human rights and principles of gender equality. (See: [UN Handbook](#), p.15) Many countries separate legal systems, and formal, customary, and even state-sanctioned customary legal systems may co-exist. Conflicts among these systems, both in the written laws and their application, can arise. While one system may provide protection to women from discrimination, another system may conflict in law or practice to discriminate against women. Drafters should consider adopting supremacy laws that grant primacy to the legal system that is most in compliance with international legal standards. Laws should ensure that any supremacy laws include outreach to local and customary leaders to facilitate the implementation of these guarantees. Laws should ensure that use of a customary adjudication mechanism does not preclude the victim from accessing the formal justice system.
- Drafters should consider prefacing laws condemning “honour” crimes and “honour” killings with the international legal obligations requiring states to modify such practices. Under [CEDAW](#), states are obligated to take appropriate measures to modify social and cultural patterns that discriminate against women (Art. 5(a)). The Committee on the Elimination of All Forms of Discrimination against Women [General Recommendation 19](#) states that “[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” CEDAW has also expressed concern over practices that uphold culture over eliminating discrimination. In its [1999 Concluding Observations on Nepal’s periodic report](#), CEDAW expressed its concern over the Supreme Court in Nepal

prioritizing the preservation of culture and tradition when interpreting discriminatory laws. Also, the Human Rights Committee has drawn attention to minority rights that infringe upon the rights of women. In [General Comment 28](#), it stated that those “rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights, including the right to equal protection of the law” (¶ 32). The [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) also requires States Parties to prohibit “all forms of harmful practices which negatively affect the human rights of women” and take all necessary legal and other measures to protect women from harmful practices and all other forms violence, abuse and intolerance (Art. 5). Similarly, the African Charter on the Rights and Welfare of the Child to take “all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child,” including customs and practices that discriminate based on sex (Art. 21).

(See: [Harmful Traditional Practices](#))

Promising practice: Some governments have recognized customary law and local government authorities’ decisions, but invalidate those laws that violate provisions in the constitution or civil code. Constitutional or civil code provisions should comply with international human rights standards and respect women’s human rights.

Criminalization of “honour” crimes, “honour” killings and other related offenses

Drafters should create a separate criminal offense of “honour” crimes and “honour” killings. (See: [Defining “Honour” Crimes and “Honour” Killings](#)) Drafters should ensure that crimes of “honour” are non-compoundable offenses: they should be prosecuted regardless of whether the victim or her family have withdrawn the complaint or whether the parties have reached a private settlement. Penalties for “honour” crimes and killings should be reflective of the seriousness of the crime and commensurate with other similar offenses. (See: [Section on Sentencing Provisions](#))

CASE STUDY: Pakistan: The traditional perception of women as the property of her male relatives, and thus a commodity to be bartered and sold at will is found in some Pakistani tribal societies. (See Amnesty International, [Pakistan: Violence Against Women in the Name of Honour](#) (1999)) Bride prices are still demanded for women. A woman, or even very young girls, may be traded or given away as part of the “blood money” needed to settle a family or tribal conflict, or as compensation to repair a man’s damaged “honour”, even as part of a karo kari settlement. Because “honour” in many tribal societies is tied to a man’s wealth and possessions, which include women and any property associated with a woman, the continued view of women as valuable possessions fosters a climate that condones violence against women in case she transgresses. Laws criminalizing “honour” crimes and killings should recognize the fundamental role that the commodification of women plays in these crimes, and as noted above, require prosecution of the offense regardless of any settlement between the parties.

Pakistan’s law outlawing “honour” crimes has been criticized for not making “honour” crimes non-compoundable offenses, and allowing the “dispute” to be settled as a private matter between the offender and the victim’s heirs, either through forgiveness (qisas) or payment of compensation (diyat). Given the traditional view of women as commodities with a value that can be settled on (like a bride price or blood money), and given that a family member is often also the perpetrator of the “honour” crime, there is significant concern that this loophole will allow many “honour” killings to go unpunished and will do little to deter “honour” crimes in Pakistan. Attempts to remove this loophole were defeated by Pakistan’s parliament in 2005 (BBC News, [Pakistan Rejects Pro-Women Bill](#) (2 March 2005).

- In addition, laws should criminalize other related offenses used to protect or restore “honour” or that accompany the commission of an “honour” crime. These crimes include: murder, assault, torture, incest, sexual abuse, rape, kidnapping, virginity testing, forcing another to commit suicide, forced eviction, stove burning, forced marriage, acid attacks, mutilation, and using women and girls as compensation to atone for the crimes of others or as dispute settlement. Laws should prohibit other acts often associated with “honour”, such as false imprisonment, restrictions on free association, and denying access to identification documents and bank accounts and guarantee women and girls equal rights with men in regard to personal civil status, freedom of association, freedom of communications, and access to information. Drafters should ensure these laws punish the offender, not the victim.
- Laws should allow prosecutors to bring multiple counts against the defendant for all behaviors where the offense violates different statutes or the offense consists of multiple acts that can each be prosecuted separately.

(See: [Good Practices in Legislation on “Harmful Practices” against Women](#), UN Division for the Advancement of Women, May 26-29, 2009, p. 18)

Criminalization of aiding, abetting, soliciting another, condoning or conspiring to commit an “honour” crime or killing

- Drafters should ensure that all individuals complicit in the “honour” crime or “honour” killing are held accountable for their role. “Honour”-based violence is often collectively sanctioned and sometimes collectively executed, so laws must encompass the possibility of multiple perpetrators and their role. Laws must also address the indirect or direct roles that may be played by multiple perpetrators. Drafters should take into account the role that leaders, family and community members may play in condoning or authorizing “honour” crimes or killings. Laws should ensure that other third parties, such as tribal council members or community leaders, who are involved in or authorize “honour” crimes and killings are punished.
- Drafters should recognize that family members may compel a younger male relative to commit the “honour” crime or killing to take advantage of juvenile justice laws that impose lighter sentences on minors. In addressing this problem, drafters should ensure other family members are held culpable for their role in aiding, abetting, soliciting another or conspiring to commit an “honour” crime or killing. Also, drafters should balance the need to ensure full accountability for minor perpetrators with that of juvenile justice standards. Juvenile justice laws should comply with international standards. See: [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\)](#) ; [Guidelines for Action on Children in the Criminal Justice System](#); [United Nations Guidelines for the Prevention of Juvenile Delinquency \(The Riyadh Guidelines\)](#).

For example, Article 38(2) of the Turkish Criminal Code states: “Where there is incitement to offend by using influence arising from a direct-descendent or direct-antecedent relationship, the penalty of the instigator shall be increased by one-third to one half. Where there is incitement of a minor, a direct-descendent or direct-antecedent relationship is not necessary for the application of this section.”

Forced suicides

Drafters should punish incitement to commit suicide or inflict self-harm. Legislation should provide for an investigation of every female suicide case that includes a medical autopsy by a specialized forensic institute as a standard procedure. Drafters should enact legislation that aims to:

- identify and prosecute cases of forced suicide and murders disguised as suicides;
- ensure due diligence in the investigation of suicides, accidents and violent deaths of women and girls. Legislation should mandate a comprehensive autopsy carried out by competent forensic authorities for all such cases.

- direct authorities to conduct a psychological autopsy to determine the deceased's mental state at the time of death where a suicide may have been involuntary or motivated by "honour." Psychological autopsies should be carried out by trained professionals to determine the presence of third party influence in the deceased's decision to commit suicide and whether "honour" was a motivating factor in the death; it should include interviews with relatives, friends and other professionals in close contact with the deceased
- regulate commonly used lethal means of suicide, such as highly dangerous substances and firearms.

(See: [Implementation of General Assembly resolution 60/251 of 15 March 2006 Entitled "Human Rights Council," Report of the Special Rapporteur on violence against women,its causes and consequences](#), Yakin Ertürk, Addendum, Mission to Turkey, 2007)

[Tajikistan](#) punishes driving to suicide (Article 109):

(1) Driving an individual to suicide or attempt upon suicide by threat, cruel treatment, or systematic degrading the dignity of a victim is punishable by imprisonment for a period of 3 to 5 years.

(2) The same actions committed in regard to a person, who was in financial or other dependence of the guilty person, or committed in regard to a minor is punishable by imprisonment for a period of 5 to 8 years.

- Drafters should take into account that "honour" killings may be disguised as suicides. Drafters should enact legislation to address the obstruction of justice and punish perpetrators who commit perjury, conspire, use bribery, violence, intimidation, threats or deception, destroy or tamper with evidence or the body, to obstruct justice. (See: Section on Obstruction of Justice; Charles Doyle, [Obstruction of Justice: An Abridged Overview of Related Federal Criminal Laws](#), 2007)
- Legislation should provide for hotlines and crisis centers to provide immediate help for persons at-risk of suicide. Drafters should consult with civil society and other specialized organizations, such as the World Health Organization, in developing prevention policies.

(See: [Implementation of General Assembly resolution 60/251 of 15 March 2006 Entitled "Human Rights Council," Report of the Special Rapporteur on violence against women,its causes and consequences](#), Yakin Ertürk, Addendum, Mission to Turkey, 2007)

Decriminalization of adultery

Drafters should repeal any criminal offenses related to adultery or extramarital sex between consenting adults. (See: [Good Practices in Legislation on “Harmful Practices” against Women](#), UN Division for the Advancement of Women, May 26-29, 2009, p. 18) Often, these laws discriminate against women whether on their face or in practice.

Example: Haiti Decree modifying offences of sexual aggression and eliminating discrimination against women decriminalized adultery.

Defenses

- *Eliminating the Defense of “Honour”*
Laws should not allow defenses of “honour” to crimes of violence against women and girls. Drafters should repeal criminal provisions that allow defenses of “honour” or any other ideology that may be construed as “honour”, such as morality, custom or ethics.
- *Reviewing Self-defense*
Drafters should scrutinize self-defense provisions for vagueness that leaves open to interpretation whether the harm includes injury to “honour”. Wording such as “dangerous or unjust act” are vague and leave open to judicial discretion whether such self-defense provisions apply to “honour” crimes; for example, a perpetrator could allege that the victim’s sexual behavior constitutes an unjust act as a way to justify the “honour” crime. Laws should clearly state that self-defense provisions do not apply to offenses committed in self-defense of “honour”, adultery or domestic femicide.

Drafters should ensure that laws do not deprive women and girls of their claim to self-defense. For example, Iraq deprives a woman of a claim to self-defense if she has killed a man attacking her because he has discovered her in the act of adultery. (See: [Women's Use of Violence in Intimate Relationships](#)).

- *Eliminating the Defense for Rapists Who Marry Their Victims*
Drafters should repeal provisions that provide a defense to a rapist for marrying his victim. Laws should prohibit the practice of marriage between the perpetrator and the victim as atonement for the crime. (See: [Good Practices in Legislation on “Harmful Practices” against Women](#), UN Division for the Advancement of Women, May 26-29, 2009, p. 25)

CASE STUDY: Brazil Penal Code, 2005, Article 107. Brazil repealed a provision in 2005 that exempted a perpetrator from punishment if he marries his victim. in cases of offenses of “honour.” This included rape and “atentado violento ao pudor,” in which the offender, by use of violence or grievous threat, coerces the victim to commit a sexual act.” (See Silvia Pimentel et al, *The Legitimate Defense of Honour or Murder with Impunity? A Critical Study of Case Law and Legislation in Latin America*, in [Honour: Crimes, Paradigms and Violence against Women 252](#) (2005)) The law also allowed a reduction in sentence, under certain circumstances related to non-violent “offenses to customs,” if the perpetrator married a third party and if the victim didn’t open a criminal investigation within 60 days of the wedding. (See Id. at 252-53)

- *Limiting Crimes of Passion and Defenses of Provocation*
Where laws provide a defense for crimes of passion, laws should clearly state that these defenses do not include or apply to crimes of “honour”, adultery, or domestic assault or murder. (See: [General Recommendation 19](#), CEDAW, Paragraph 24(r)(ii) (recommending the adoption of laws to remove the defense of “honour” in a crime against or murder of a female family member); [Good Practices in Legislation on “Harmful Practices” against Women](#), UN Division for the Advancement of Women, May 26-29, 2009, pp. 19-20)
- Crimes of passion and provocation defenses often have a disparate impact that discriminates against women. Although such defenses may use gender-neutral language, men are often the beneficiaries of these defenses. In “honour” crimes and killings where defendants claim a crime of passion defense, women and girls are frequently the victims. Furthermore, a lower evidentiary standard for crimes of passion statutes may allow the defense even when the perpetrator has not witnessed the act of provocation or adultery. Thus, the perpetrator could invoke this defense based on accusations or suspicions, rather than observations. In cases where “honour” or crimes of passion defenses require *flagrante delicto* (while the crime is ablaze or in the act of being committed) perpetrators have enjoyed the protection of such defenses even where the crime was premeditated. Legislative vagueness, discriminatory attitudes, and judicial discretion confer wide latitude in determining whether the perpetrator was still under the influence of passion. States are obligated to repeal criminal laws that constitute discrimination against women, and in this context, the application results in *de facto* discrimination against women and girls.

CASE STUDY: Brazil Penal Code, Article 25. In Brazil, as in many countries, homicide is not a crime if it is committed in legitimate self-defense. However, the manner in which Brazil's statute on self defense has been applied and interpreted demonstrates how a defense may have a disproportionate and discriminatory impact on women. Article 25 of the Brazil Penal Code defines self defense as a person reacting to "unjust aggression present or imminent to his right or someone else's." After Brazil amended its penal code to limit the ability of perpetrators to use the defense of passion or emotion in cases of spousal killings (a claim of "privileged homicide" or "violent emotion right after unjust provocation by the victim" can still be used to mitigate a defendant's sentence), perpetrators successfully argued that defense of a man's "honor" is legitimate self-defense. In other words, a woman's alleged adulterous or similar act and its impact on a man's honor (a fundamental "right") are held to be the same as an "unjust" and "imminent" physical act of aggression against the man himself, legitimizing the killing of the woman.

- Although higher courts over-turned acquittals based on the "honour" defense starting in the 1950s, and Brazil's Supreme Court explicitly rejected the "honour" defense in 1991 as having no basis in Brazilian law, it survived in lower courts, particularly in rural areas, where juries (and their social prejudices) have the responsibility to decide homicide cases and judges have broad discretion. In Brazil's civil law system, high court decisions do not create binding precedent on lower courts, giving rise to widespread jurisprudential conflict over the "honour" defense. For example, after the Supreme Court's 1991 ruling, the lower court in the same case again acquitted the defendant of double-murder on defense of "honour" grounds, with the judge stating that the "honour" defense was at "the heart" of the case. (See Human Rights Watch, *Criminal Injustice: Violence Against Women in Brazil* (1991)) As one commentator has noted: "Use of the honor defense signals a persisting conflict within Brazilian culture over female sexuality and within Brazilian legal institutions over the status of honor and the scope of legitimate defense." (*Culture, Institutions and Gender Inequality in Latin America*, 197 (2000)) Reports indicate that the defense persists to this day in the interior provinces of Brazil. (See 39 *Law & Soc'y Rev.* 315)

CASE STUDY: In 2001, Jordan amended Article 340, which provided a defense of “honour” for a man who killed or assaulted his wife or female mahrams upon witnessing their adultery. However, the amended law does not preclude the Judiciary from applying Article 98 of the Penal Code to “honour” crimes, which the perpetrator can use as a defense/mitigating factor and which many argue is more important to the prosecution of “honour” crimes than Article 340. Article 98 allows for reduced penalties (as little as 6 months in prison and rarely more than two years) where the perpetrator committed the crime in a fit of fury because of an unjust and dangerous act by the victim. One translation of Article 98 reads: "The committer of a crime who undertakes it in a furious passion produced by a bad [ghair muhiq, lit. unrightful] or dangerous act performed by his victim, benefits from a mitigating excuse" (Jordanian Penal Code 1961: Art. 98); Catherine Warrick, *The Vanishing Victim: Criminal Law and Gender in Jordan*, 39 Law & Soc'y Rev. 315, 337 (2005). A 1964 decision by the Jordanian Court of Cassation ruled that if the defendant did not meet the strict elements set forth in Article 340 (including the requirement that the perpetrator actually witness the alleged adultery), the court could apply Article 98 in cases of “honour” crimes. 23 Penn St. Int'l L. Rev. 251, 276 (2004). In such cases, and despite the premeditated nature of many “honour” crimes, the man can argue that his damaged “honour” provoked a “fit of fury” or “furious passion” resulting in the woman’s injury or death. This has allowed men to escape punishment for murder even where they killed a woman on mere suspicion of improper behavior. Thus, even before Article 340 was amended, most perpetrators of “honour” crimes relied on Article 98 for exoneration. When amending and drafting legislation, drafters must canvass laws carefully to ensure other provisions do not similarly absolve the perpetrator or mitigate his sentence.

There is no clear pattern to the Jordanian Cassation Court’s application of Article 98 to “honour” killings, and the Court seems to take a broad view of what constitutes a “bad” or “dangerous” act on the part of the victim, including pregnancies. (See: Kathryn Arnold, Note, Are the Perpetrators of Honor Killings Getting Away With Murder? Article 340 of the Jordanian Penal code Analyzed Under the Convention on the Elimination of All Forms of Discrimination Against Women, 16 Am. U. Int'l L. Rev. 1343 (2001))

In 1975, the Court of Cassation stated:

“The fact that the law has provided for a reduction of penalty in a specific case does not mean that the court cannot apply the general rules provided for in Articles 97, 98, as well. *The general rules are applied when the provisions dealing with the specific cases do not.* The victim's act of adultery is a material act that touches the defendant's honour and that is why it is not violation of the law to grant him a reduction of penalty.”

(See: Cassation Criminal 19/68 494 (1968)) (holding that a killing committed two days after the defendant learned his sister was engaging in adultery occurred in a fit of fury and was not, therefore, premeditated); see also Cassation Criminal 58/73 849 (1973) (finding that a boy who killed his sister after one day is justified under Jordanian law, as opposed to premeditated murder because the court found that the boy did not have time to “cool off”).(See: Kathryn Arnold, Note, Are the Perpetrators of Honor Killings Getting Away With Murder? Article 340 of the Jordanian Penal code Analyzed Under the CEDAW, 16 Am. U. Int'l L. Rev. 1343 (2001))

Sentencing provisions

Punishments for “honour” crimes and killings must be commensurate with the offense. Drafters should ensure that laws do not impose lighter prison sentences for “honour” killings than other murders. “Honour” killings should be treated as homicides carrying the highest penalty, such as aggravated or first-degree murder, that reflects the perpetrator’s intent behind such crimes. Drafters should repeal any laws that allow judicial discretion in considering mitigating factors, such as the offender’s “condition” or private settlements, when sentencing a defendant.

Drafters should exclude provisions that allow for reduced sentences or impunity in cases of “honour” crimes. Laws should prohibit the reduction of penalties in cases of violence against women and girls where:

- The murder was committed as a crime of passion;
- The victim was not a virgin;
- The perpetrator witnessed or suspects the victim of adultery or extramarital sex;
- The perpetrator committed the “honour” crime based on the victim’s behavior, disobedience or any other “unlawful or dangerous act” of the victim
- The rapist marries the victim.

CASE STUDIES:

Lebanon:

Lebanon removed the reduction of sentences for “honour” killings in 1999 from its penal code. Yet, Article 252 still allows for a commuted sentence if the perpetrator committed the crime out of extreme anger because of an “unjust and dangerous act” by the victim. Similarly, Article 193 (if the motive was honorable and characterized by chivalry and decency) and Article 253 (if there are any “mitigating” circumstances) also provide for a reduction of sentence, and both articles are also applied to crimes committed on the pretext of “honour”, particularly if the perpetrator was the husband.

The Lebanese courts have held that a husband benefited from the terms of Article 252, where the husband shot his wife “under the influence of an extreme rage” after the wife left him and had an affair (she had previously requested a divorce and been denied). The court held that the husband met the three elements required for sentence mitigation by Article 252, namely that the wife committed a “wrongful” act in leaving the marital home and having an affair, that she undermined the “honour”, dignity and manliness of her husband by calling him undignified names and committing adultery, and that it was established that the crime was immediate, spontaneous and done in a rage. The court also noted that the wrongful act committed by the victim was “particularly dangerous” given the mindset and “mentality” of the perpetrator, who was an oven worker. Case no. 10/1999 – decision no. 85/1999, Criminal Court of North Lebanon, cited in Hoyek, et al, *Murder of Women in Lebanon: “Crimes of Honour” Between Reality and the Law*, in Sara Hossain & Lynn Welchman eds., *Honour: Crimes Paradigms and Violence Against Women* 124 (2005). In two other cases, the court declined to apply Article 252. In one case the court held the brother of the victim had clearly resolved to kill his sister long after the effect of rage had worn off. Case no. 582/2001, decision no. 413/2001, First Instance Chamber of Criminal Court of North Lebanon, cited in Hoyek at 124-25. In the second case, even though the brother of the victim was clearly in an extreme rage after learning of the victim’s marital infidelity, the court held that the sister’s adultery was not potentially dangerous and not enough to warrant the brother’s act in killing her. Case no.36/1998, decision no.11/1998, Criminal Court of North Lebanon, cited in Hoyek, 125.

In applying Article 193, the courts have found a legitimate claim to honourable motive characterized by chivalry and decency if the perpetrator is the husband, but not in cases involving other relatives of the deceased such as a mother or brother. See: Hoyek and cases cited therein at 122-23.

However, in most rulings involving claims of “honour”, the Lebanese courts apply 253 whether or not they apply 252 or 193. Article 253 allows courts simply to reduce sentences in the presence of “mitigating factors.” What constitutes a mitigating factor is not defined, leaving a great deal of discretion to the courts, and they have used that discretion to reduce the sentences of perpetrators who commit crimes under the pretext of “honour”, for example in cases involving perpetrators who kill wives, sisters, or daughters because of illegitimate pregnancies or suspected infidelity. The courts note such “mitigating” factors as the “circumstances” of the crime, or the tribal or other customs prevailing in the particular region where the crime occurred, or the “psychological agitation” of the accused when he killed his victim. (See: Hoyek and cases cited at 125-27)

Tunisia: Tunisia reformed provisions reducing sentences for husbands who caught their wives in an act of adultery.

Syria: A presidential decree amended Article 548 of the Syrian Penal Code, which previously exempted men who kill female relatives out of provocation for illegal sex acts or husbands who murdered spouses for adultery from punishment. The new article states that, "He who catches his wife, sister, mother or daughter by surprise, engaging in an illegitimate sexual act and kills or injures them unintentionally must serve a minimum of two years in prison." Article 192, which allows judges to lessen the punishment for any crime motivated by "honor," is still intact. Article 242 also mitigates punishment for individuals who murder out of rage and in response to an illegal act by the victim. Drafters who increase punishments for "honour" crimes and killings should ensure the punishments are commensurate with other crimes and reflect the seriousness of the crime. When reforming laws, drafters must conduct a comprehensive review of all legislation for other provisions that may reduce or eliminate punishments for perpetrators. (See: [Presidential Decree Increases Penalty for Honor Killings in Syria](#), StopVAW, July 22, 2009. [Syria: No Exceptions for 'Honor Killings.'](#) Human Rights Watch, July 28, 2009)

Promising Practice: Turkey's new penal code introduced mandatory life sentences for perpetrators who commit crimes or killings of custom (Article 82), which is considered an aggravating factor. A provocation of an 'unjust act' in 'killings in the name of custom,' however, could reduce the life imprisonment sentence. Article 29, formerly "unjust provocation" was amended as "unlawful acts" and states that the sentence reduction is not applicable to killings in the name of honor. The provision's commentary notes, however, that this may not be applicable for all honour killings, thus leaving a loophole. (See: [Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns](#), Women for Women's Human Rights, 2005, pp. 62-62) Drafters should ensure that statutory language clearly states that sentence reductions will not apply to "honour" crimes and killings, adultery or domestic femicides. There should be no exceptions for unjust acts or provocations in "honour" crimes or killings, murders in response to adultery, or domestic femicides. (See: [Tackling honour in the aftermath with a good practice](#) prepared by Leylâ Pervizat)

Private settlements

- Laws should ensure that practices allowing an offender to pay the victim or her family compensation in return for forgiveness or other harmful dispute resolution practices, such as payback rape, do not apply when the victim and the perpetrator are from the same family and do not preclude state prosecution. To give effect to this principle, drafters should ensure that laws require a full investigation and prosecution of “honour” crimes and killings regardless of any settlements that the victim, her family and the offenders have reached. Laws should place responsibility for prosecuting “honour” crimes and killings with the prosecutor and not with the victim or her family. (See: [UN Handbook](#), p. 40) Laws should require pro-arrest and pro-prosecution policies where probable cause exists in “honour” crimes and killings. (See: [UN Handbook](#), p. 41) Laws should state that “honour” crimes and killings are non-compoundable offenses, of which prosecution cannot be compromised. (See: [Good Practices in Legislation on “Harmful Practices” against Women](#), UN Division for the Advancement of Women, May 26-29, 2009, p. 31. See: Section on Roles and Responsibilities of Prosecutors)
- Drafters should take steps to address the issue of compensation. Laws should allow criminal sentences to include an order of compensation and restitution from the perpetrator to the victim or her heirs--excluding perpetrators or accomplices to the “honour” crime or killing; clearly state that while compensation is a punitive element in violence against women cases, it does not substitute for other punishments, such as imprisonment, and; make provision for a state-sponsored compensation program. (See: [UN Handbook](#), p. 59) In cases where the offender cannot pay the victim compensation, laws should for state-sponsored or other compensation for victims who have sustained significant bodily injury or impairment of physical or mental health as a result of the “honour” crime. (See: [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), ¶¶ 12-13)

Promising Practice: The Nigerian draft Violence Prohibition Bill states that a prosecutor may not refuse to initiate a prosecution or drop charges except where the Director of Public Prosecutions has so authorized.

CASE STUDY: Pakistan’s Qisas and Diyat Ordinance enables the victim or her heirs to forego prosecution in lieu of compensation from the perpetrator. Under the Qisas and Diyat Ordinance, the heirs of a murder victim may choose qisas (retribution); diyat (compensation or compromise), or; complete forgiveness of the victim. Many families choose diyat, or compensation for the victim’s death. In *Mahammad Akram Khan v. The State* (2001), the Supreme Court ruled that “honour” killings violated Article 9 of the [Constitution](#), stating that “No person shall be deprived of life or liberty save in accordance with law.” The Court stated that the use of “honour” killings is void under Article 8(1) of the Constitution: “Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.” This law essentially removes the responsibility of prosecution from the government and places accountability in the hands of the victims’ heirs, who may be accomplices to the “honour” killing or under severe economic or social pressure not to bring criminal charges. The Qisas and Diyat Ordinance should not apply to crimes of honour. “Honour” crimes and killings should be made non-compoundable offenses, and drafters should ensure that any compensation laws are not a substitute for criminal prosecution in these cases.

- Also, drafters should repeal any provisions that absolve a rapist or kidnapper if they marry their victims. For example, [Egypt has removed provisions](#) that absolve rapists/kidnappers if they marry their victims. Other [countries](#), however, still absolve rapists and kidnappers if they marry their victims.

Accompanying domestic violence legislation

- Drafters should consider framing “honour” crimes within the domestic violence context. Should drafters use a domestic violence framework to address “honour” crimes, it should account for the particular dynamics of “honour” crimes and ensure the scope encompasses all potential perpetrators and victims. Factors to consider are that perpetrators of “honour” crimes may not be a partner or family member for purposes of domestic violence, there may be multiple perpetrators involved in an “honour” crime, there may be more than one victim, and the scope of domestic violence protection may exclude certain perpetrators or victims, such as minors. (See: ACPO Honour Based Violence Strategy, Appendix B) Laws should include a civil order for protection remedy, including an emergency ex parte protection order, for victims under threat of an “honour” crime or killing or the victim of an “honour” crime. Laws should criminalize violations of protection orders. Drafters may apply much of the same theory on domestic violence to orders for protection in “honour”-based violence cases: the goals are to afford protection to the victim through a speedy process that acts as an alternative to criminal prosecution. See: [Orders for Protection](#) and [Sample Orders for Protection](#), Stop VAW, the Advocates for Human Rights) and for information on orders for protection in domestic violence cases. (See: [Domestic Violence](#))

- Laws should ensure that where the petition is filed by a third party on behalf of an adult woman, the petition can only be brought with her consent. An exception to the third party rule is where the victim is unable to file an application herself, whether because she is falsely imprisoned, in another country or is a vulnerable adult. Third party applications on behalf of a child should only be permitted with court permission or appointment of a guardian ad litem. (See: [Domestic Violence; Forced Marriage \(Civil Protection\) Act 2007 Relevant Third Party](#), Newham Asian Women's Project, 2008)
- Drafters should also ensure that criminal laws prohibit and punish acts of domestic violence and violations of orders for protection. (See: [Domestic Violence](#))

Immigration laws

Legal Basis

- Drafters should ensure that grounds for asylum include gender persecution. Specifically, laws should ensure that a woman or girl may seek asylum on the basis of fear of a harmful practice, including an “honour” crime or killing. Laws should state that women and girls who are victims of or fear persecution through “honour” crimes or killings constitute members of a particular social group for asylum purposes. Laws should also provide that a relative may also seek asylum on the basis of seeking to protect a woman or girl from an “honour” crime or killing. Where a conflict between women’s human rights and cultural rights arises, laws should clearly state that women’s human rights prevail in determining asylum grants. (See: Good Practices in Legislation on “Harmful Practices” against Women: Expert Group Meeting, UN DAW, 26-29 May 2009, Section 3.8.1)
- Countries should ensure that survivors of “honour” crimes not face deportation or other negative immigration consequences when reporting crimes of violence to police and other officials. Drafters should ensure that laws allow victims of violence to independently and confidentially apply for legal immigration status. (See the United Nations expert group report entitled "[Good practices in legislation on violence against women](#)," p. 37)

Best practice: Domestic violence victims whose residency in the U.S. is dependent on another’s immigration status may apply for their own immigration status under certain conditions. VAWA. Individuals with a dependent residence permit in the Netherlands, may seek residence status where they can show proof of sexual or other forms of violence in a relationship. (See the United Nations expert group report entitled "[Good practices in legislation on violence against women](#)," p. 37)

(See: [Good Practices in Legislation on “Harmful Practices” against Women](#), UN Division for the Advancement of Women, May 26-29, 2009, p. 34; [The Stockholm Platform for Action to Combat Honour Related Violence in Europe](#), *Adopted within the framework of the Conference “Honour Related Violence within a Global Perspective: Mitigation and Prevention in Europe”*, Stockholm, 7-8 October 2004, ¶ i)

Guidelines and protocols for asylum officers

The [UN Handbook](#) recommends that laws require the appropriate ministerial branch responsible for asylum procedures consult with police, prosecutors, judges, health and education professionals to develop regulations, guidelines and other protocols for implementation within a specified timeframe of the law's entry into force (p. 20-21). Drafters should ensure that the relevant government body work in coordination with other professionals and should draw upon the [UN Guidelines on International Protection: Gender Related Persecution within the Context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#):

- Interview female asylum-seekers separately;
- Provide women asylum-seekers with information about and access to the asylum process, in a way and language understandable to them;
- Provide interviewees with a choice of interviewers and interpreters of their same sex and who are aware of cultural, religious or social sensitivities;
- Offer an open and reassuring environment
- Make introductions, explain persons' roles, making clear he or she is not a trauma counselor, explain the interview purpose and emphasize confidentiality;
- Maintain a demeanor that is neutral, compassionate and objective with minimal interruptions;
- Ask open-ended and specific questions, keeping in mind that women and girl asylum applicants may not associate honour-related violence they are fleeing with questions about torture;
- Be open to stopping and scheduling subsequent interviews should the claimants' emotional needs require;
- Allow for adequate preparation to build confidence and trust, as well as allow the officer to pose the right questions;
- Collect relevant information from the country of origin;
- Avoid allowing the claimant's type and level of emotion influence credibility. Recognize that exact details of the act of rape or sexual assault may not be necessary, but focus on the events leading up to, and after, the act, the context and other details, and the possible motivation of the perpetrator.
- Provide referrals to psychosocial counseling and support services. Strive to make available psycho-social counselors prior to and following the interview.

(See: [Domestic Violence](#), [Trafficking in Women and Girls](#), [Female Genital Mutilation, Forced and Child Marriage](#), [Harmful Practices](#))

Also, laws should provide trainings for asylum and immigration officers on gender-sensitive issues and customs and practices. Trainings should seek to increase officers' understanding of the dynamics of "honour" crimes, as well as those customs and practices that place women and girls at risk for "honour"-based violence. At a minimum, trainings should include the following basic information about common ways women are persecuted:

- Violations of social mores, such as marrying outside of an arranged marriage, wearing lipstick or failing to comply with other cultural or religious norms, that may result in harm, abuse or harsh treatment distinguishable from the treatment given the general population. Applicants frequently are without meaningful recourse to state protection.
- A woman's claim may be based on persecution particular to her gender that may be analyzed and approved under one or more grounds. For example, rape, sexual abuse, domestic violence, infanticide and genital mutilation are forms of mistreatment primarily directed at girls and women and they may serve as evidence of past persecution on account of one or more of the five grounds.
- Societal expectations that require women to live under the protection of male family members. The death or absence of a spouse or other male family members may render a woman even more vulnerable to abuse.
- Survivors of rape or other sexual abuse may face stigmatization from their community. They may also be at risk for additional violence, abuse or discrimination because they are viewed as having brought shame and dishonour on themselves, their families, and communities.

(See: [United States](#), Stop VAW, the Advocates for Human Rights and [Considerations for Asylum Officers Adjudicating Asylum Claims from Women](#), Memorandum to All INS Officers/HQASM Coordinators from Phyllis Coven, Office of International Affairs, May 26, 1995, p. 4)

Promising Practice: The Immigration and Refugee Board of Canada published [Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution](#), providing a 4-part framework through which to assess claims: 1) Assess whether the harm feared constitutes persecution; 2) determine whether the grounds for fear fall under any of the five grounds set forth in the UN Refugee Convention; 3) determine whether the fear is well-founded, and; 4) determine whether there is an option of internal flight. The Canadian adjudication guidelines on this issue are, for the most part, in alignment with UNHCR guidance, and several countries have followed the Canadian model in addressing these issues. (See: [Canada](#), Stop VAW, the Advocates for Human Rights)

Roles and responsibilities

Roles and responsibilities of police

- Laws should state that the primary duties of police are to protect the victim and promote offender accountability by consistently enforcing laws and procedures so that all “honour” crimes and killings are addressed by the criminal justice system. To give effect to this goal, laws should authorize police, by judicial authorization where appropriate, to enter premises, conduct arrest of the primary aggressor(s), and confiscate weapons or dangerous substances in cases involving “honour”. Laws should charge police to work in coordination on the response to “honour”-based violence with advocates, health care providers, criminal justice actors, including prosecutors, child protection services, local businesses, the media, employers, religious leaders, health care providers, clergy and organizations working with victims and immigrant communities. (See: [Coordinated Community Response](#), StopVAW)

Promising Practice: An example of intersectoral collaboration to assist domestic violence victims involves the municipality, police and NGOs in Bulgaria. In Sofia, these three bodies provide a consultation center. The purpose is to provide multiple resources for victims in one independent location. Interviewers reported that victims of domestic violence are using the center to seek help where a police officer, lawyer and social worker are available to meet with victims of domestic violence. (See: [Implementation of the Bulgarian Law on Protection against Domestic Violence](#), The Advocates for Human Rights and The Bulgarian Gender Research Foundation (BGRF), 2008, p. 47 (citations omitted).

- Drafters should require the appropriate ministerial branch or department consult with police, prosecutors, judges, health and education professionals to develop regulations, guidelines and other protocols for implementation within a specified timeframe of the law’s entry into force. (See: [UN Handbook](#), Section 3.2.6) The promulgating body should consult and work closely with non-governmental organizations and victims’ advocates. Overall, these policies should seek to mainstream the police response, so that law enforcement uses the same trainings, educational materials and risk assessment model. Laws should require police protocols, regulations and guidelines include the following minimum elements:
- A common definition of “honour” crimes and killings that comports with a national definition. Where there is no national definition, policies may define “honour” crimes and killings as “any form of violence against women and girls, in the name of traditional codes of so-called honour.” (See: Section on Defining “Honour” Crimes and “Honour” Killings)

CASE STUDY: The UK Metropolitan Police uses the following definition for honour-based violence: “a crime or incident that has or may have been committed to protect or defend the honour of the family and/or community.” The definition includes an explanation that states:

There is no honour in the commission of murder, rape, kidnap, and the many other acts, behaviour and conduct which make up ‘violence in the name of so-called ‘honour’.

The simplicity of the above definition is not intended in any way to minimize the levels of violence, harm and hurt caused by the perpetration of such acts.

It is a collection of practices, which are used to control behaviour within families to protect perceived cultural and religious beliefs and/or honour.

Such violence can occur when perpetrators perceive that a relative has shamed the family and/or community by breaking their honour code.

Women are predominantly (but not exclusively) the victims of ‘so-called honour based violence’, which is used to assert male power in order to control female autonomy and sexuality.

‘So-called Honour Based Violence’ can be distinguished from other forms of violence, as it is often committed with some degree of approval and/or collusion from family and / or community members.

(See: [CPS Pilot on Forced Marriage and So-called ‘Honour’ Crime – Findings](#), Crown Prosecution Service, Annex B, 2008)

- The establishment of a data collection, monitoring and information sharing system on violence against women, including “honour” crimes and killings. The system should include specific categories for “honour” crimes and killings, as well as a mechanism for local police authorities to report “honour”-based violence statistics to a national umbrella authority. Information sharing systems should also provide information on issued protection and restraining orders so that police can determine whether such an order is in force.
- Define the structural handling of cases involving “honour”, ensuring that responsibility for “honour” crimes and killings lies at the senior rank. Policies should develop specialized expertise within police units, yet ensuring that all police will undergo appropriate trainings on violence against women and girls. Policies should seek to increase the presence of women in the police forces, including operational rank, and provide victims of or at-risk of “honour”-based violence the option of speaking with a female officer.

Promising Practices:

Pakistan's Criminal Law Bill (2004) states that no police officer below the grade of superintendent may investigate "honour" crimes.

- Facilitation of cross-communications among police units in different areas, particularly with regard to receiving victims who are transferred.
- Trainings for police that provide information on women's human rights, violence against women, cultural sensitivities, and "honour"-based violence, including its prevalence, defining characteristics, risk factors, and consequences. Trainings should seek to dispel harmful stereotypes about women and girls and emphasize that police are obligated to respond to cases involving "honour" with the same professionalism and effectiveness as with other cases. Trainings should seek to improve police response at identifying, investigating and prosecuting cases involving "honour". (See: [Improving Law Enforcement Investigation Techniques Training](#), StopVAW)
- Targeted outreach to communities with a high risk of "honour" crimes and killings.

The Netherlands uses special experts and officers on immigrant and ethnic issues to answer community members' questions, discuss with them best strategies for handling certain issues, and advise their colleagues. These officers are knowledgeable about the immigrant community's language, culture, and have developed a network of contacts. (See: Honour Related Violence: European Resource Book and Good Practice, Kvinnoforum, 2005, p. 132)

- Development of a police response to "honour" crimes and killings that involves a comprehensive, multi-sectoral and coordinated response. Guidelines should state that the overall objective of effective police response is to promote the safety of the victim or person at-risk, accomplish the arrest, prosecution and conviction of the perpetrator, and prevent repetition of the crime. Police response should be guided by the need to incorporate the needs of "honour" crime victims, respect their dignity and personal integrity, minimize intrusion into their lives, and maintain high standards for collection of evidence. Law enforcement should contextualize their response to "honour" crimes and killings, and the police response should include:
 - Responding in a language understood by the complainant/survivor;
 - Conducting a coordinated risk assessment of the scene;
 - Interviewing parties, witnesses, including children, separately;
 - Using an authorized interpreter and not rely on family members, neighbors, friends or community members to act as an interpreter;
 - Recording the complaint in detail and filing an official report;
 - Informing the victim of her rights;
 - Ensuring transport for the victim to obtain medical treatment if needed or requested;
 - Providing protection to the person who reported the violence;

- Avoiding serving as a mediator between the victim and the offenders. (See: [UN Handbook](#), Section 3.8.1; Resolution Adopted by the General Assembly, [Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women](#), U.N. Doc. A/Res/52/86, 1998; [Text of the revised Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Bangkok, 23 - 25 March 2009, Commission on Crime Prevention and Criminal Justice, 2010)
- Laws should direct law enforcement authorities to review relevant policies to ensure their effective application to cases involving “honour”. Police authorities should review domestic violence policies to ensure they take into account the particular issues associated with “honour” crimes: “honour”-based violence often targets women and girls; it may particularly involve immigrant or ethnic populations; it often involves multiple perpetrators within or outside of the family, and; it involves more subtle, coercive indicators, such as restrictions on freedom of movement, association and communications, that may not be reflected in a domestic violence law that focuses on physical harm. Law enforcement authorities should also review witness and victim protection policies to ensure they are appropriately protecting victims in “honour” cases. Laws should prohibit police from requiring victims to submit to a virginity test and from transferring a victim to a detention facility for protection. Police should only transfer a victim to a shelter with her consent, and should advise but never force the victim into a decision.

(See: [Association of Chief Police Officer of England, Wales & Northern Ireland Honour Based Violence Strategy](#))

Promising Practice: The Duluth Police Pocket Card is a laminated card that police carry and use to document domestic violence incidents. Policymakers may wish to refer to this card as a template for a pocket card for developing a similar document for “honour” crimes. The card instructs the police on what to document, what risk assessment questions to ask, what to inform the victim about services and what to expect, how to determine the predominant aggressor, and basics on the applicable law. See: [Duluth Police Pocket Card](#), StopVAW.

- Drafters must ensure that laws and guidelines that govern police conduct are in place. In some cases, police misconduct or obstruction of justice may impede effective investigations of “honour” crimes and killings. The Code of Conduct for Law Enforcement Officials proscribes corruption and states that it includes the “commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted” (Art. 7, Commentary (b)). It is important that police undergo trainings on “honour” crimes and domestic violence to dispel misperceptions they may hold. The

drafters should work closely with civil society to ensure effective civilian and independent oversight of the police and to ensure the availability of procedures complaints about police misconduct to an independent investigatory body.

Promising practice: The Women’s Justice Center in California, U.S.A., has developed an [evaluation form](#) for victims to evaluate police response. Advocates, law enforcement and other bodies may wish to adapt this form to track and evaluate police response.

Roles and responsibilities of courts and judiciary

Drafters should seek to ensure the criminal justice system effectively addresses all “honour” crimes and killings to ensure accountability for the perpetrator(s) and promote the safety of the victims. Laws should charge the court system to work in coordination with police, advocates, health care providers, criminal justice actors, child protection services, local businesses, the media, employers, religious leaders, health care providers, clergy and organizations working with victims and immigrant communities. See: [Coordinated Community Response](#), StopVAW.

Judicial discretion

- Laws should limit judicial discretion to reduce sentences, reduce the charge or exculpate the defendant in “honour” crimes and killings. Specifically, laws should prohibit judges from using the following factors as mitigating evidence in cases involving “honour”:
 - Private settlements, reconciliation and forgiveness among the perpetrators and the victim or her family;
 - The level of perceived dishonour to the family and perpetrator;
 - The victim’s past behavior, including sexual behavior, that supposedly violated the traditional code of “honour”;
 - The morality or ethics of the victim’s behavior that motivated the perpetrator to commit the “honour” crime or killing;
 - The perpetrator’s status as the household’s primary wage earner;
 - Defenses in cases of “honour” crimes, “honour” killings, and domestic femicides, including:
 - Crimes of passion defense
 - Provocation defenses
 - Defenses of “honour”, morality or ethics
 - Defenses in cases of adultery, whether witnessed or not
- Laws should require judges to undergo trainings on “honour” crimes and domestic violence to dispel misperceptions they may hold. Trainings for judges should provide information on women’s human rights, violence against women, cultural sensitivities, dispel harmful stereotypes about women and girls and “honour”-based violence, including its prevalence, defining characteristics, risk factors, and consequences, the needs of victims, victim experiences in court, and

the impact of judicial demeanour on perpetrators. Drafters should work closely with civil society to ensure effective civilian and independent oversight of the court system and to ensure the availability of procedures complaints about judicial misconduct to an independent investigatory body. They should also instruct judges on evaluating safety risks in cases involving “honour” in sentencing.

- The [United Nations Handbook for legislation against women](#) recommends that laws require the appropriate ministerial branch consult with police, prosecutors, judges, health and education professionals to develop regulations, guidelines and other protocols for implementation within a specified timeframe of the law’s entry into force (p. 20-21). Guidelines should instruct judges to treat “honour” crimes and killings as a serious crime and advise them on the limits in applying the aforementioned defenses or considerations to “honour” crimes, “honour” killings and domestic femicides. Guidelines should also address sentencing and direct judges to impose penalties that are commensurate with other crimes of violence, promote accountability for the perpetrator and promote victim safety. Guidelines should direct judges to exercise caution or even prohibit them from suspending sentences, granting bail, granting parole or probation in “honour” crimes and killings. A judicial decision on custodial sentencing and pretrial release should always prioritize the safety risk to the victim if the perpetrator is released, and guidelines should direct judges to deny release, impose conditions on the release that will ensure the victim’s safety, and/or impose a no contact order paired with a verbal warning about the consequences of breach. Guidelines should discourage judges from ordering mediation in cases involving “honour” because of the power imbalance within the “honour” context. Guidelines should address judicial demeanour and direct judges to listen to the victim, take her words seriously, and consider her needs. (See: [Judicial Responses to Domestic Violence](#), Stop VAW, The Advocates for Human Rights).
- In addition, laws should provide for the creation of a judicial code of conduct, or, where one already exists, its review and evaluation to ensure it respects the human rights of women and girls. (See: UN [Basic Principles on the Independence of the Judiciary](#)) Drafters should work closely with civil society to ensure effective civilian and independent oversight of the judiciary and to ensure the availability of a complaint procedure regarding judicial misconduct to an independent investigatory body. Laws should allocate funding to an independent body to conduct court monitoring to systematically identify needed improvement in judicial responses in these cases and also increase the visibility of “honour” crimes and killings. (See: [Court Monitoring Programs](#), Stop VAW, The Advocates for Human Rights)
- Drafters should consider providing for the establishment of specialized courts to handle violence against women cases, including “honour” crimes and killings, and ensure these courts are adequately staffed, funded and have appropriate training for personnel. Such courts can help ensure batterer accountability and victim protection by streamlining navigation of the court system, increasing victims' access to resources, and ensuring a greater expertise of the judges and

other personnel addressing these issues. (See: [Specialized Domestic Violence Court Systems](#), Stop VAW, The Advocates for Human Rights. Also, laws should promote a stronger female presence in judiciary)

Promising Practice: In 2008, the Liberian government created a special court with exclusive jurisdiction over rape cases and other forms of violence against women and minors, located in the capital of Monrovia. It became fully operational in February 2009. During Liberia's long civil war that ended in 2003, the rape of girls and women was rampant. A new and stringent rape law was enacted in 2005, but rape cases continued to rise, and were rarely successfully pursued or prosecuted in regular courts, and impunity persisted for perpetrators. Some studies estimated more than 90% of Liberian women and children were exposed to some form of gender-based or sexual violence. A UN human rights report released in 2006 found that Liberia's courts and police failed to fully prosecute perpetrators of sexual violence even after the new rape law came into effect. Another report estimated less than four cases were successfully prosecuted in the year after the law was passed, noting that the legal system was in serious need of reform and only in operation as little as 42 days a year. (Lois Bruthus, [Zero tolerance for Liberian Rapists](#), in Sexual Violence (2006)) This challenge continues despite the establishment of the new court, known as Criminal Court 'E', and stepped up prosecution efforts, but more women appear to be coming forward to report rapes and other sexual crimes – rape is the number one crime reported to the Liberian police in 2009. It is hoped the court will strengthen the judicial system to expeditiously handle criminal proceedings related to sexual violence and build the capacity of the legal profession and courts in general to prosecute these types of case. [Combating Sexual And Gender Based Violence in Liberia](#) (2008). Groups have recommended that Liberia expand this court into other areas of the country, to ensure adequate access for all Liberians.

Victim protection and access to justice

- Laws should grant judges the power to take measures to protect victims from retaliation and intimidation, such as issuing protection or restraining orders in domestic violence and “honour” cases against the perpetrator(s). Laws should criminalize a violation of these orders and authorize judges to impose an immediate and direct criminal penalty. Laws should facilitate information sharing among courts, police, prosecutors and other criminal justice actors through a registration system of these orders.
- Laws should require courts to evaluate procedures and structures to enhance victim safety and minimize perpetrators' ability to intimidate or harass the victim at the court through measures such as:
 - Establishing a separate waiting area for the victim;
 - Delaying the perpetrator's departure so he cannot follow or attack the victim;
 - Send a court personnel to accompany the victim to her transport;
 - Use a metal detector or search procedures for weapons or harmful substances;

- Requiring issuance of a judicial order to notify the victim upon the perpetrator's release from prison;
- GPS monitoring.
(See: [Domestic Violence](#))
- Courts should take steps to increase victims' access to justice, such as offering emergency hours, multiple locations such as police units for filing a complaint, authorized and trained interpreter services, disability access, and template forms and checklists. Courts should establish systems that enable a victim to testify in court proceedings in a way that protects their privacy and confidentiality, ensures their safety during and after proceedings, and prevents re-victimization. Victim refusal to testify should not be considered an offense. Courts should also make available to victims of "honour" crimes trained advocates who can provide victims with advocacy and support services throughout the proceedings. (See: UN Res. [A/RES/52/86](#), ¶10; [Text of the revised Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, DRAFT, 2009](#), ¶ 10)
- Also, drafters should "ensure that all victims of violence are able to institute proceedings as well as, where appropriate, public or private organisations with legal personality acting in their defence, either together with the victims or on their behalf" in cases of honour crimes and killings. (See: Council of Europe, Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 2002, Article 38) Legislation should provide for a registration or other system for organizations wishing to intervene on behalf of victims of honour killings to acquire the necessary legal standing. While Article 237(1) of the Turkish Criminal Procedure Code provides that victims, real persons and legal entities, that have been damaged by the crime, are entitled to intervene in the public prosecution during the prosecution phase, this has not been the case in Turkey. In cases where women's NGOs have filed an application on behalf of a victim of honour killings to intervene in the public prosecution, the court has refused their application on the grounds that they are not directly affected by the crime.

Roles and responsibilities of prosecutors

- Laws should clearly state that prosecutors have a duty to investigate all crimes of violence against women and girls, including "honour" crimes and killings. Laws should state that the objectives of prosecutions in "honour" crimes and killings are: (1) to protect the victim, (2) to deter the defendant from further violent acts by holding him accountable for his actions, and (3) to communicate to the community that domestic violence will not be tolerated. (See: [Role of Prosecutors](#), StopVAW)
- Laws should confer responsibility on prosecutors, not victims or their families, for initiating and prosecuting "honour" crimes and killings. *Ex officio* prosecution

should be exercised in all “honour” crimes and killings regardless of the level or type of injury. Legislation should clearly state the prosecutor’s responsibility to pursue prosecution in “honour” cases independent of any private settlements. Laws should state that private settlements or compensations between the victim’s family and the offender do not preclude government-initiated prosecution in “honour” cases. Drafters in countries with religious or customary religious or customary ordinances governing forgiveness and compensation should ensure that these laws do not undermine the prosecutor’s accountability to pursue these cases. Where states lack a criminal offense of “honour” crimes or killings, laws should direct prosecutors to use other criminal statutes, such as assault, battery, harassment, kidnapping, threats of violence, and murder, to prosecute the offender. See: Section on Criminalization of “Honour” Crimes and Killings.

- Because the perpetrators of “honour” crimes are often family members, drafters may wish to provide for absent victim policies, which allow for prosecution without the victim if there is sufficient independent evidence. A victim absent policy should stress the initial gathering of evidence, including the victim's own testimony, and direct prosecutors to work with police in developing and implementing effective strategies to collect additional and supporting evidence. (See: [Prosecutorial Reform Efforts](#), StopVAW) Such evidence should include evidence of the perpetrator’s history of violence, exploitation, or other abuse. At the same time, victims of “honour” crimes should be enabled to testify in court proceedings in a way that protects their privacy and confidentiality, ensures their safety during and after proceedings, and prevents re-victimization. Laws should make clear that victim refusal to testify in “honour” crimes is not an offense. (See: UN Res. [A/RES/52/86](#))
- Laws should require the development of guidelines or protocols for the prosecution of “honour” crimes and killings. The [UN Handbook](#) recommends that laws require the appropriate ministerial branch consult with police, prosecutors, judges, health and education professionals to develop regulations, guidelines and other protocols for implementation within a specified timeframe of the law’s entry into force (p. 20-21). Guidelines should state that the overall objective of effective prosecutorial response is to promote the safety of the victim or person at-risk, accomplish the arrest, prosecution and conviction of the perpetrator, and prevent repetition of the crime. Prosecutorial response should be guided by the need to incorporate the needs of “honour” crime victims, respect their dignity and personal integrity, minimize intrusion into their lives, and maintain high standards for collection of evidence. (See: UN Resolution 52/86 revised draft) Protocols or policies may be framed within a domestic violence framework, but should take into account the dynamics particular to “honour”-based violence. Honour-based violence often targets women and girls; it may particularly involve immigrant or ethnic populations; it often involves multiple perpetrators within or outside of the family, and; it involves more subtle, coercive indicators, such as restrictions on freedom of movement, association and communications, that may not be reflected in a domestic violence law that focuses on physical harm.

Promising Practice: The UK Crown Prosecution Service has promulgated [Guidance on Prosecuting Cases of Domestic Violence](#), which encompasses “honour” crimes and directs prosecutors to establish links between domestic violence and “honour” crimes. See also: [CPS Policy on Prosecuting Cases of Domestic Violence](#), Crown Prosecution Service.

- Guidelines and protocols for prosecutors should use a clear definition of “honour” crimes and killings that comports with a national definition. Where there is no national definition, policies may define “honour” crimes and killings as “any form of violence against women and girls, in the name of traditional codes of so-called “honour”.” (See: Section on Defining “Honour” Crimes and Honour Killings) Throughout the process, prosecutors should keep the victims informed, throughout all stages of the process and in a language they understand, of their rights, legal proceedings—including the opportunity to participate, scheduling, progress and outcome--services and other support measures, possibilities for seeking reparations, and the release of the offender from detention or prison. Laws should require prosecutors to provide an explanation to the victim in cases where he or she drops a “honour” crimes case. (See: United Nations expert group report entitled "[Good practices in legislation on violence against women](#), p. 40)
- Drafters should designate specialist prosecutors in each of the local areas, who oversee and are the primary responsible authorities on “honour” crimes and killings. At the same time, all prosecutors should undergo trainings on: the dynamics of violence against women, domestic violence, and “honour” crimes and killings; victim and witness care and protection and local support agencies; cultural context and sensitivities, where applicable; coordination with and advising law enforcement; the risks associated with “honour” crimes and killings, such as use of interpreters, identifying potential victims and contributing to risk assessments. Trainings for prosecutors should be conducted in coordination with trainings for law enforcement and judges to enable identification of “honour” cases within the same framework and facilitate communication.
- Laws should direct prosecutors to work in coordination with advocates, health care providers, police, child protection services, local businesses, the media, employers, religious leaders, health care providers, clergy and organizations working with victims and immigrant communities. (See: [Coordinated Community Response](#), StopVAW)

Promising Practice: The Fourth Judicial District Court of Hennepin County in Minnesota, United States, established a [Domestic Abuse Service Center](#) to serve as a centralized location for “people who are victims of violence caused by a family or household member,” including actual or threatened violence. The Service Center is staffed by District Court personnel who can assist a victim complete the paperwork necessary for temporary legal protection from an abuser. The Service Center also houses other city, county and advocacy organization staff, who are available to help victims of domestic violence with other legal and related needs. Hennepin County’s Service Center was the first such center of its kind in the United States when it was started in 1994; it has since been replicated in several other locations. Such centers are believed to reduce bureaucratic and other barriers to women seeking protection from abusers, including addressing the difficulty and confusion associated with traveling to several different offices for needed services.

- Laws should establish a monitoring system for “honour” crimes and killings for prosecutors. Monitoring indicators include ethnicity, age, sex, disability, religion and use of weapons or other substances. Any cases of criminal offenses of threatening behavior, violence or abuse, committed as an “honour” crime, should be flagged as both an “honour” and a domestic violence case. All flagged cases should be transmitted to the specialist prosecutor for a final review and confirmation. (See: Monitoring of Laws on Violence against Women) Information sharing systems should also provide information on issued protection and restraining orders so that prosecutors can determine whether such an order is in force.

(See: CPS Pilot on Forced Marriage and So-called ‘Honour’ Crime – Findings, Crown Prosecution Service, 2008; Recommendations on Future Work on Forced Marriage and So-called ‘Honour’ Crime, Crown Prosecution Service, 2008)

Promising Practice: In 2009, UK prosecutors successfully prosecuted a father for murdering his daughter in an “honour” killing. Although neither her body nor a murder weapon were ever found, authorities deemed her missing long enough to be dead, and the jury drew the conclusion that the victim was murdered based on the known facts. The prosecution used testimony from the victim’s family members; a letter written under duress by the victim; expert testimony on “honour”-based violence; and evidence as to the defendant’s character in relation to his previous conviction for grievous bodily harm for attacks on other people. The victim’s father was sentenced to life imprisonment, and the victim’s uncles were acquitted. (See: [Father Convicted of 1999 ‘Honour’ Killing of His Daughter](#), Crown Prosecution Service, December 17, 2009)

Data collection and information gathering

- Laws should direct the appropriate state agencies to collect quantitative data relating to “honour”-based violence. Quantitative data is obtained by measuring indicators of prevalence, government response, and program performance. This data can be obtained by state statistics offices by utilizing surveys administered to the general population and by obtaining data from relevant administrative sources, such as hospital and police records. Data should be collected according to [United Nations Principles of Official Statistics](#), also available in [Arabic](#), [Chinese](#), [French](#), [Russian](#), and [Spanish](#). In addition, the UN Statistics Division has developed resources on gathering statistics relating to crime:
 - [Manual for the Development of a System of Criminal Justice Statistics, Studies in Methods](#)
 - [Guide to Computerization of Information Systems in Criminal Justice, Studies in Methods](#)
 - [Manual for the Development of Criminal Justice Statistics, Studies in Methods](#). The Manual for the Development of a System of Criminal Justice Statistics includes a section on victimization surveys, which takes into account that many crimes may go unreported and that victimization and self-reporting surveys will help reveal these crimes.
- Drafters should ensure that laws require the gathering and dissemination of statistics related to “honour” crimes and establish a database to track such information. Authorities should collect data on the following indicators: the forms of “honour”-based violence, incidence, causes and risk factors, the linkages between economic deprivation and exploitation and “honour”-based violence, short-, medium-, and long-term consequences, effects on population sub-groups of women and girls, prosecution rates, convictions, penalties, the relationships between the victim and perpetrator(s), victimization patterns including repeat or multiple victimization, ethnicity, age, sex, disability, religion, and the use of weapons or dangerous substances. (See: UN Resolution 52/86; [Text of the Revised Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, DRAFT, 2009](#))
- Drafters should consider allocating funding for qualitative studies to better understand the causes, dynamics and consequences of “honour” and “honour” crimes in their country. Qualitative data is data that goes beyond the scope of statistics. Monitors should assess what legislation, policies and programs exist for the prevention of violence against women, the prosecution of violent offenders, and the protection of survivors. They should then analyze how effective these laws, protocols, and programs are in attaining victim safety and offender accountability. The UN Office of the High Commission for Human Rights has issued a [Training Manual on Human Rights Monitoring](#) and a Trainer’s Guide, which provides guidelines. [Chapter V](#) sets forth the basic principles, including monitoring as method of improving the protection of human rights, the

principle of doing no harm, respecting the mandate, knowing the standards, using good judgment, seeking consultation, respecting authorities, maintaining credibility and confidentiality, taking basic security measures, understanding the country, maintaining consistency, persistence, and patience, providing accuracy and precision in reporting, remaining impartial and objective, being sensitive to the security and psychological needs of the interviewees, and maintaining integrity, professionalism, and visibility. While all of the principles set forth in the UN Training Manual are essential, the principle of doing no harm and maintaining confidentiality is of the utmost importance to protect victims and prevent further victimization or harm. The fact-finder's principle duty is to the victim or potential victims of human rights violations, and at a minimum, the fact-finder must refrain from actions or omissions that would endanger their safety.

CASE STUDY: The United Nations Population Fund conducted a qualitative study on “honour” killings in Turkey. The [publication](#) sets forth a brief description of its methodology, which included training on the project, interview protocol, qualitative methodologies, and background on “honour” killings. This study used two interview protocols for individuals and NGOs. Field experts also analyzed the information gathered to better assess the punishments used in “honour” crimes.

(See: Monitoring of Laws on Violence against Women and Girls; [Indicators, Crime and Violence against Women, Supporting Paper](#), UNODC, 2007)

Promising Practices:

The UK Home Office is re-investigating homicides from 1993 to 2003 to determine whether the killings were motivated by “honour”. Although most of the cases were closed, Scotland Yard sought to examine the perpetrators’ motives as part of a broader initiative to develop risk assessment indicators and establish a national law enforcement database to track such crimes. (See [Gill](#), 2009, p. 8)

The Netherlands has established a new system to track “honour”-related violence and instituted a 5-year, \$17 million program to eradicate it in 2006. The program was intended to anticipate “honour” crimes and find the best means to prevent such crimes from occurring in the future, with the safety of the victim as the first priority. The system tracked 279 “honour”-related crimes in and around The Hague in 2006. An Honour-Related Violence Taskforce has been set up to improve interdepartmental cohesion and the management of “honour” crimes by the Dutch authorities, and enhance “social prevention” of “honour” violence, protection for victims, and criminal prosecution of the perpetrators.

Public education

- Drafters should ensure that laws on “honour” crimes and killings include provision for public awareness and educational campaigns. Information campaigns should aim to dispel negative perceptions that discriminate against women and girls and to increase understanding of gender equality and women and girls’ rights. Also, judges, prosecutors, law enforcement, child protection service providers, educators, health providers, media and advocates must undergo training to understand “honour” crimes, its causes, effects, indicators and available remedies and resources for women and girls who are victims of or at-risk of “honour” crimes and killings.

Promising Practice: The non-governmental Turkish organization, [Women for Women’s Human Rights](#), works in collaboration with the General Directorate for Social Services and Child Protection to provide trainings to women throughout Turkey in socio-economically disadvantaged districts with high immigrant populations. The program social workers as trainers and provides workshops on 16 different topics, including violence against women and strategies against violence. (See: Liz Ercevik Amado, [The Human Rights Education Program for Women \(HREP\): Utilizing state resources to promote women’s human rights in Turkey](#), *New Tactics in Human Rights*, 2005) Drafters should ensure that public education programs mandate government agencies to work in partnership with and financially support non-governmental groups with expertise in “honour” crimes and killings.

- Laws should ensure that target audiences \ include religious and community leaders, youth, communities of concern, including minority ethnic communities or immigrants’ communities, media, healthcare, social and educational sectors that work with children.
 - Outreach to religious and customary leaders and institutions should seek to provide them with human rights education, as well as engage them to publicly condemn “honour” crimes. (See: Working towards the elimination of crimes against women and girls committed in the name of honour, A/RES/59/165 (2004) (¶ 34) and Council of Europe [Resolution 1681](#) (2009) (¶ 4.5-4.7); Civil and Political Rights, Including the Question of Disappearances and Executions: Extrajudicial, Summary or Arbitrary Executions, U.N. Doc. E/CN.4/2001/9, ¶ 41)
 - Public education of women and girls should provide information on “honour”-based violence, their rights, how to report such crimes and obtain protection, and resources and service providers available to assist them.
 - Public education of service providers and sectors working with children should include a focus on detecting risks of “honour” crimes.
 - Public awareness campaigns should also target the media to educate them on the human rights violations associated with “honour” crimes and encourage them to report on these crimes in a respectful manner that

maintains victims' dignity and privacy. Media should be trained on reporting the dynamics of violence against women and “honour” crimes. (See CoE Resolution 1699, ¶ 4.7; [The urgent need to combat so-called “honour crimes,”](#) Council of Europe, June 8, 2009)

- Public education efforts should also target the law sector, including judges, police and prosecutors, through trainings on the dynamics of “honour”-based violence and women’s human rights.

Victim protection

Rights of victims

- Victims may include the victim who is the direct target of the “honour” crime, as well as her immediate family or dependants. (See: [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), ¶ 8) When drafting provisions on the rights of victims of “honour”-based violence, drafters should take into account that her immediate family or dependants may be the perpetrators or accomplices to the crime. Laws should clearly delineate that, for purposes of this section, victims do not include any person who perpetrated, authorized, aided, abetted or otherwise solicited the “honour”-based violence, regardless of their relationship to the victim.
- Drafters should ensure that laws include provision for funding for comprehensive and integrated support services to assist victims of “honour” crimes. The Council of Europe Parliamentary Assembly [Resolution 1681](#) (2009) recommends states provide shelter that is geographically accessible to victims, develop long-term physical and psychological support programs for victims, facilitate economic independence of victims, and provide police protection and a new identify, if needed. Drafters should incorporate the following aspects of assistance to victims:
 - A free, 24 hour hotline that is accessible from anywhere in the country, offers assistance in multiple languages, and is staffed by persons trained in “honour” crimes issues. (See: [Crisis Centers and Hotlines](#), Stop VAW, The Advocates for Human Rights)

Promising Practice: The Allochtone Vrouwentelefoon Oost Nederland hotline provides support assistance to immigrant women. The telephone line is untraceable, free-of-charge, and staffed by volunteers who collectively speak ten languages. (See: Honour Related Violence: European Resource Book and Good Practice, 2005, p. 127)

- A shelter for every 10,000 members of the population, located in both rural and urban areas, which can accommodate victims and their children for emergency stays and which will help them to find a refuge for longer stays (See: [Shelters and Safe Houses](#), Stop VAW, The Advocates for Human Rights) The decision to stay at shelters should always be made voluntarily by the victim. Drafters should be aware that shelters may exclude girls under 18 years of age, and they should ensure that special accommodation should be made for girls under 18 years of age at risk for “honour”-based violence. Shelter policies and accommodations should take into account the special needs of immigrant women and girls.

CASE STUDY: Where shelters are lacking, some governments have incarcerated victims in prisons to protect them from “honour” crimes. There are no shelters available for women at risk of “honour” crimes in Jordan, and state authorities often place them in involuntary detention in the Jweideh Correctional and Rehabilitation Center. (See: [U.S. Department of State Country Human Rights Report: Jordan](#) (2008)) An administrative governor may detain any person in protective custody to protect public safety, without due process, a practice regularly applied to females at-risk of “honour”-based violence. Once detained under the governor’s order, only his consent will secure her release—which is generally granted only when he believes she can leave safely and a male relative agrees to assume responsibility for her. (See: Human Rights Watch, [Honoring the Killers: Justice Denied for “Honor” Crimes in Jordan](#), 2004, pp. 24-27)

- Drafters should repeal any laws or orders that allow the practice of detaining women victims of violence and provide adequate resources to provide shelters, and arrest the perpetrators, rather than the victims. Shelters for domestic violence should also be mandated to receive and assist victims of “honour”-based violence. Drafters should adopt laws ordering the immediate release of victims of “honour”-based violence who have been detained without charge, process or review; repeal laws that precondition a woman’s release to the custody of a male relative or husband; and, upon release, ensure victims’ full protection and facilitate voluntary placement in a shelter for women victims of violence if so desired by the victim.
- One crisis center for every 50,000 population, with trained staff to provide support, legal advice, and crisis intervention counseling for victims of “honour” crimes, including specialized services for particular groups such as immigrants (See [Crisis Centers and Hotlines](#), Stop VAW, The Advocates for Human Rights)
- Crisis centers should be prepared and adequately trained to deal with victims before, during and after the “honour”-based violence.

- Accreditation standards for the assistance centers described above should be developed in consultation with NGOs and advocates working directly with complainants/survivors.
- Access to health care for immediate injuries and long-term care including reproductive health care and HIV prophylaxis. (See: [Role of Health Care Providers, Confidentiality and Support](#); [Screening and Referral; Documentation and Reporting](#); and [Creating a Health care Response](#), Stop VAW, The Advocates for Human Rights)
- Health care should be adequately resourced to address the particular injuries, such as burns or disfiguration, that “honour” crime victims may have sustained. “Honour” crime victims who are raped must be afforded appropriate services and support. Drafters should ensure that laws provide for advocacy crisis centers, with trained counselors to address her safety, explain their rights, address urgent medical needs, obtain medical care, refer victims to other services and maintain confidentiality. (See: [Sexual Assault Advocacy Program](#), Stop VAW, The Advocates for Human Rights) As with domestic violence, a coordinated community response is an important part of the response to “honour” crimes. (See: [Coordinated Crisis Intervention](#), Stop VAW; Sexual Assault; the United Nations expert group report entitled "[Good practices in legislation on violence against women](#)" Section 6 on protection, support, and assistance to survivors) Guidelines and protocols on hospital and clinic security should be developed. Specifically, security units at hospitals should be charged with the responsibility of the patients and their information, be notified of potential problems that require visitor restraint, such as potential visitors who may pose a danger to the victim patient. Security should coordinate closely with medical personnel and law enforcement to ensure the victim’s safety in all areas of the hospital from further “honour”-based violence or intimidation from perpetrators.
- Aid, including shelter, clothing and food, should also be provided for the children of an “honour” crime victim in the shelters described above.
- A state agency should be assigned to establish the aid centers described above, by providing general guidelines or standards, and a state agency should be mandated to fund all of the above services.

Promising Practice: The [UK's Women's National Commission](#) is a national body that liaises between the women's sector and government to promote women's equality. The commission is state-funded yet free to comment on government policy. The Women's National Commission established a [Violence Against Women Working Group](#), with two sub-groups on sexual violence and domestic violence, which seeks:

1. To promote understanding and awareness of violence against women and effect changes in laws, policy and practice.
2. To monitor implementation of Government Action Plans.
3. To co-ordinate Women's National Commission member views on violence against women and to ensure that these views are represented to policy-makers.
4. To liaise with other Women's National Commission Groups on relevant aspects of work.
5. To produce reports in response to national and international developments.
6. To liaise with Government departments, other non-departmental public bodies, and relevant NGO policy working groups.

(See: [United Nations Handbook for legislation against women](#), 3.6.1. (See also: [UN Model Code VII B](#))

Child protection provisions

- Legislation should ensure that there are child welfare laws and policies to prevent child abuse.
- Legislation should identify "honour" crimes as a form of child abuse.
- Legislation should mandate that prevention and prosecution of "honour" crimes and killings are given the same resources as other forms of child abuse.
- Legislation should create a child protection system that contains, at a minimum, survivor support, alternative care options, family support services, justice system responses (see order for protection section below) and referral mechanisms.

(See: [UNICEF Child Protection Strategy](#) for all the components necessary to establish a [child protection system](#); [Child Protection: A handbook for Parliamentarians](#))

Core elements in child protection laws and systems to protect against “honour” crimes and killings

The following elements should be established as the core elements in child protection laws and systems to protect against “honour” crimes and killings. Elements are discussed in detail further below.

- Legislation should provide for an emergency order for protection remedy for a female in need of protection from an “honour” crime or killing.
- Legislation should authorize the removal of the child from the home if the court determines that a responsible adult has a reasonable fear that a parent or parents or guardian are considering authorizing or carrying out an “honour” crime or killing.
- Legislation should authorize the placement of a child in danger of infliction of an “honour” crime or killing in a shelter, refuge or foster home. Authorization for the child to live in shelter or foster care should include authorization to attend school locally, or attend a boarding school to continue her education.
- Legislation should provide for procedures by which the parents can regain custody of the minor child, including receiving counseling and warnings. Once the minor child has been returned to her parents, legislation should provide for on-going visits to the minor child by social service providers and counselors to ensure the well-being of the minor child. Legislation should provide for counseling of parents on how “honour” crimes and killings constitute a violation of women and girls’ rights.
- Legislation should provide that where court orders are issued for protection against an “honour” crime, the order remain in place until the parents have demonstrated at a court hearing that they understand that an “honour” crime and killing is illegal, and that they will not carry out this practice.
- Legislation should provide for child-centered legal services, including representation for petitioning for civil or criminal liability victim compensation.
- Legislation should presume that there is no justification for the practice of “honour” crimes and killings.

For example, [Ghana Children’s Act of 1998](#), section 5 states:

“No person shall deny a child the right to live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would—

- (a) lead to significant harm to the child; or*
- (b) subject the child to serious abuse; or*
- (c) not be in the best interest of the child.*

Standing to apply for order for protection

- Legislation should provide that any reputable person, such as a family member, teacher, neighbor, or counselor, having knowledge of a child who appears to be in need of protection, and having reason to fear imminent bodily harm for the child from the perpetration of an “honour” crime or killing, may petition the court for an order for protection from the crime or killing.
- Legislation should provide that a girl or woman over the age of 10 who has reason to fear her own imminent bodily harm from the perpetration of an “honour” crime or killing also has standing to apply for an order for protection.

Evidence needed to obtain order for protection

Legislation should state that the testimony of those with standing to apply for an order for protection from “honour” crimes and killings, in court or by sworn affidavit, is sufficient evidence on its own for the issuance of the order for protection. No further evidence should be necessary.

Petition for emergency order for protection

- Legislation should provide that the petition for an emergency order for protection shall allege the existence of or immediate and present danger of “honour” crimes or killings.
- Legislation should provide that the court has jurisdiction over the parties to a matter involving “honour” crimes and killings, notwithstanding that there is a parent in the child's household who is willing to enforce the court's order and accept services on behalf of the family. This ensures continued protection in cases where parents may be divided over the issue of the “honour” crime or killing.
- Legislation should provide an emergency order for protection remedy for a female in need of protection from an “honour” crime or killing. (See: Domestic Violence Section)
- Legislation should state that there is no waiting period necessary for the emergency protection order to take effect.
- The emergency order for protection should include:
 - Injunction against “honour”-based violence;
 - Suspension of parental authority if the court determines that a parent or parents are considering authorizing the “honour” crime or killing of a minor child or that the child or a responsible adult has a reasonable fear that the parents are considering authorizing the “honour” crime or killing;

Copy of order for protection to law enforcement agency

An emergency order for protection shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the child.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system of verification, information as to the existence and status of any order for protection issued.

Parental intervention and education program

Legislation should provide that the parent, parents, or guardian of a child in a shelter, refuge or foster care home shall attend an intervention and education program on the issue of “honour” crimes and killings and women’s human rights. Legislation should require that the intervention and education program be established by NGOs with experience in this field. Legislation should require that the state fund the intervention and education program.

Review of status of child in shelter, refuge or foster care home

- When an emergency order for protection is in effect and a child is residing in a shelter, refuge, or foster care home, the court shall periodically review the status of the child and of the parent or guardian regarding the issue of “honour” crimes and killings. (See Hearing by Court).
- If the court finds that it is in the best interest of the child, the court may order that the child may return home to her parents.
- Legislation shall provide that all other terms of the order for protection, including the injunction against travel and the injunction against “honour”-based violence, shall remain in place until the court finds that it is in the best interest of the child for each injunction to be lifted.
- Legislation should require follow-up monitoring of the child who returns to her parents to ensure that an “honour” crime or killing does not take place later.
- Legislation should provide that if the court finds that it is in the best interest of the child to remain in the shelter, refuge or foster care home, the court may continue the child’s placement in the facility.

Violation of order for protection

Legislation should state that violation of the emergency order for protection is a crime.

No time limit on order for protection

Legislation should state that an emergency order for protection should be left in place permanently, or until lifted by decision of the court after a hearing, or until the child attains the age of majority.

Hearing by court

- Legislation should provide that a parent, parents or guardian may request a hearing on the emergency order for protection to determine whether the child shall continue to reside at a shelter, refuge, or foster home.
- Legislation should provide that the hearing shall occur within 3 days of the removal of a child to a shelter, refuge, or foster home.
- Legislation should provide that hearings by the court on an emergency order for protection shall be without a jury and may be conducted in an informal manner. In all court proceedings involving a child alleged to be in need of protection, the court shall admit only evidence that would be admissible in a civil trial.
- Legislation should provide that allegations of a petition alleging a child to be in need of protection must be proved at trial by clear and convincing evidence.

Right to participate in proceedings

Legislation should provide that a child who is the subject of an emergency order for protection hearing, and the parents, guardian, or legal custodian of the child, have the right to participate in all proceedings on an emergency order for protection hearing.

Testimony of child

- Legislation should provide that in the hearing for the order for protection, the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so.
- Legislation should provide that informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom.
- Legislation should provide that the court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed.
- Legislation should provide that the court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned.

CASE STUDY: The Child Protection Statutes for the State of Minnesota in the United States provide protective provisions regarding the examination and testimony of a child within the child protection services.

- 2009 Minnesota Statutes, Child Protection, [Minn. Stat. 260C.163](#) – Hearing:

Subd. 6. Examination of child.

In any child in need of protection or services proceeding, neglected and in foster care, or termination of parental rights proceeding the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so. Informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom. The court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed. The court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned in accordance with subdivision 7.

Subd. 7. Waiving presence of child, parent.

The court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In any proceeding, the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian.

Termination of parental rights

If, after a hearing, the court finds by clear and convincing evidence that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent intent and desire to carry out an “honour” crime or killing on a child, it may terminate parental rights. Upon the termination of parental rights all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceeding concerning the child.

Child protection advisory body

- Legislation should mandate the formation of a child protection advisory board consisting of experts in the field who will be able to identify problems with implementation of the law and areas in which more research is needed.

- Legislation should require that the advisory board be charged with the duty of researching customary laws, community practices, and attitudes so that evolving practices may be noted and amendments to the law may be drafted as needed.

Data collection on emergency orders for protection

- Legislation should require data collection on specific aspects of the implementation of the new law, such as number of emergency orders for protection sought, granted, denied, cancelled, or appealed.
- Legislation should require that the data be able to be disaggregated by the type of order for protection sought so as to be able to identify an order for protection on the basis of “honour” crimes and killings, as well as the general identity of the petitioner (the individual at risk, family member, or other aware individual).
- Legislation should require that this data be kept and made available publicly.
- Legislation should require qualitative data about the effectiveness of orders for protection to be gathered on a regular basis from police, courts, child protection agencies, counseling centers, shelters, schools, and from survivors.
- Legislation should require that this data be compiled by the relevant government ministry and be published on an annual basis.

Maltreatment of Widows

Overview

Definitions and forms of maltreatment of widows

Civil laws

Criminal laws

Victims rights and responding to victims' needs

Roles and responsibilities

Other provisions related to the maltreatment of widows

Overview

Core elements of legislation on the maltreatment of widows

The following elements should be established as the core elements of any law on the maltreatment of widows:

- Prohibition against discrimination against women in all areas of life;
- Explicit extension of prohibition against discrimination to matters involving adoption, marriage, divorce, dissolution, marital property, inheritance and other personal matters;
- Equal property and inheritance rights for women and for girls;
- Equal rights and responsibilities in marriage and with regard to the family;
- Equal rights in land and property reform;
- Victim protection and support;
- Public awareness and education about the maltreatment of widows, women's human rights, laws, and remedies;
- Trainings for legal actors, religious, traditional and community leaders and NGOs on women's human rights, laws and the dynamics of the widow maltreatment;
- Accountability for perpetrators who violate women's human rights;
- Registration of all marriages;
- Harmonization of the legal framework that addresses women's human rights and equality in family law, inheritance laws, land and property systems, regulations, customary laws, and criminal and civil codes.

Sources of international law

United Nations:

- A number of international instruments guarantee equality for women and prohibit discrimination. The [Convention on the Elimination of All Forms of Discrimination against Women](#) (hereinafter CEDAW) requires states to grant women equality before the law, including equal legal capacity and ability to exercise that capacity in civil matters (Art. 15). The [International Covenant on Civil and Political Rights](#) in Article 26 also requires states to provide legal protection for women's rights on an equal basis with men and to guarantee the effective protection of women against discrimination through competent national courts (Art. 2(c)).

- With regard to marriage, both the [Convention on the Elimination of All Forms of Discrimination against Women](#) and the [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#) requires the full and free consent of both parties to a marriage. Article 16 of the [Convention on the Elimination of All Forms of Discrimination against Women](#) requires States Parties to ensure women and men the same rights and responsibilities during marriage and at its dissolution; the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children as well as to guardianship, wardship, and trusteeship of children, or similar institutions; the same rights regarding ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
- The [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#) prohibits “[a]ny institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person.” The element unique to slavery but not necessarily found in a forced marriage is the right of ownership that is exercised over the victim. [Slavery Convention of 1926](#), Art. 1(1)).
- International law requires the registration of marriages. The [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#) requires a competent authority to register all marriages in official records (Art. 3); see also [African Women’s Protocol](#), Art. 6(d).
- On inheritance and property, the Committee on the Elimination of All Forms of Discrimination against Women [General Recommendation 19](#) affirms that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession (see also: Economic and Social Council resolution 884 D (XXXIV)). The committee also states that governments must abolish laws and practices that: grant women a smaller inheritance of their husband or father’s property than a widower or son; restrict the rights of women to a deceased’s property, and; fail to promote equal ownership of property acquired during marriage for women (¶¶ 34, 35). [CEDAW](#) states that government must guarantee women equality with men to exercise in civil matters, which includes granting women equal rights to conclude contracts and to administer property (Article 15).
- Under [CEDAW](#), states are obligated to take appropriate measures to modify social and cultural patterns that discriminate against women (Art. 5(a)). The Committee on the Elimination of All Forms of Discrimination against Women [General Recommendation 19](#) states that “[t]raditional attitudes by which women

are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” CEDAW has also expressed concern over practices that uphold culture over eliminating discrimination. In its [1999 Concluding Observations on Nepal’s periodic report](#), CEDAW expressed its concern over the Supreme Court prioritizing the preservation of culture and tradition when interpreting discriminatory laws. Also, the Human Rights Committee has drawn attention to minority rights that infringe upon the rights of women. In [General Comment 28](#), it stated that those “rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights, including the right to equal protection of the law” (¶ 32). In addition, [UN Resolution 2003/22 “Women’s equal ownership, access to and control over land and the equal rights to own property and to adequate housing”](#) “[e]ncourages Governments to support the transformation of customs and traditions that discriminate against women and deny women security of tenure and equal ownership of, access to and control over land and equal rights to own property and to adequate housing, to ensure the right of women to equal treatment in land and agrarian reform as well as in land resettlement schemes and in ownership of property and in adequate housing, and to take other measures to increase access to land and housing for women living in poverty, particularly female heads of household.”

Africa:

The [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) dictates that States Parties take appropriate measures to:

- ELIMINATE all forms of discrimination against women (Article 2);
- ENACT and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women (Article 2(1)(b));
- PROHIBIT “all forms of harmful practices which negatively affect the human rights of women” and take all necessary legal and other measures to protect women from harmful practices and all other forms violence, abuse and intolerance (Article 5);
- GUARANTEE women and men equal rights in marriage, require the free and full consent of both parties in marriage, establish a minimum age of 18 for women to marry, and encourage monogamy as the preferred form of marriage (Article 6);

- ENSURE that women and men enjoy the same rights in case of separation, divorce or annulment of marriage (Article 7).

Article 6 guarantees to women the right to acquire, administer and freely manage her own property during marriage. Article 20 of the protocol requires States Parties to take appropriate legal measures to ensure that widows enjoy all human rights, which includes ensuring that:

- WIDOWS are not subjected to inhuman, humiliating or degrading treatment;
- A WIDOW automatically becomes the guardian and custodian of her children, after the death of her husband, unless this is not in the children's best interests; and
- A WIDOW has the right to remarry and to marry the person of her choice.

Article 21 states that women and men shall have the "right to inherit, in equitable shares, their parents' properties." States are to ensure that widows have the right to "an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it."

Europe:

- The [Charter of Fundamental Rights of the European Union](#) specifically enshrines the right to non-discrimination on the basis of sex, and Article 23 obligates states to ensure equality between men and women in all areas. Article 17 guarantees to everyone the right to own, use, dispose of and bequeath his or her lawfully acquired possessions and prohibits deprivation of one's possessions excepting in conditions as provided by law. The [EU guidelines on violence against women and girls and combating all forms of discrimination against them](#) states that violence against women and girls includes forced marriage whether perpetrated or condoned by the state or not (Annex, p. 14).
- The Council of Europe's [Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11](#) prohibits discrimination in the enjoyment of all rights and freedoms set forth in the treaty (Article 14). The Council of Europe's [Social Charter](#) calls on States Parties to take all appropriate measures, including through institutions and services, to protect the rights of children and young persons to social and economic protection (Article 17). The [European Parliamentary Assembly Resolution 1468 "Forced Marriages and Child Marriages"](#) (2005) addresses situations where there are doubts about free and full consent by authorizing a registrar to interview both parties prior to the marriage. [Recommendation 1723 "Forced Marriages and Child Marriages"](#) (2005) recommends that the Committee of Ministers direct the appropriate committee to investigate the issue of forced marriages and develop a strategy for Member States to take action on the matter.

Americas:

The Organization of American States has promulgated the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#) (“Convention of Belem do Para”), which prohibits violence against women in the public and private spheres. It requires States Parties to take a number of measures, including legal measures and progressively specific measures to modify legal or customary practices which perpetuate violence against women or are based on inferiority, superiority or stereotyped roles of either of the sexes that condone or exacerbate violence against women (Articles 7(e) and 8(b)). Article 17(4) of the [American Convention on Human Rights](#) states that States Parties are to “take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.”

Drafting the legislative Preamble

The legislative preamble sets the stage for the entire piece of legislation. The following elements are important to a strong and inclusive legislative preamble:

- IT acknowledges that the root cause of violence against women is the subordinate status of women in society. (See: [Declaration on the Elimination of Violence against Women](#) (DEVAW), [CEDAW](#), [General Recommendation 12](#), [General Recommendation 19](#), [UN Secretary-General’s study on violence against women, Other Causes and Complicating Factors](#); [The International Legal Framework](#), [Stop VAW](#), Advocates for Human Rights);
- IT defines discrimination against women. [United Nations Handbook for legislation against women](#), 3.1.1
- IT protects all women, with specific protections for populations such as women living with HIV/AIDS. [United Nations Handbook for legislation against women](#), 3.1.3.
- IT excludes customary or religious justifications for the maltreatment of widows. [United Nations Handbook for legislation against women](#), 3.1.5; the [Report of the Special Rapporteur on violence against women, its causes and consequences, a framework for model legislation on domestic violence, 1996, E/CN.4/1996/53/Add.2](#); Uganda Constitution, Art. 37: Right to culture and similar rights: “Every Ugandan has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion *in community with others*” (emphasis added).
- IT states that the main principles of the legislation are to promote safety for the complainant/survivor and accountability for the perpetrator. (See: [Drafting](#)

[Domestic Violence Laws](#); [United Nations Model Legislation](#), [Stop VAW](#), Advocates for Human Rights IT states that everyone is entitled to equal rights and responsibilities as to marriage, during marriage and at its dissolution. (See: [ICCPR](#) and [CEDAW](#));

- IT states that parents, regardless of their marital status, share equal rights and responsibilities, in matters relating to their children. (See: [CEDAW](#))
- IT states that everyone is entitled to equality before the laws and in civil matters, and it states that women are entitled to equality with men in inheritance and property matters. (See: [CEDAW](#))

Constitutional guarantees

Constitutions should enshrine and guarantee women's human rights without exception. In particular, Constitutions should:

- PROHIBIT discrimination based on sex;
- GUARANTEE equal protection of the law to women and men;
- GUARANTEE equal rights between women and men;
- GUARANTEE equal rights and responsibilities between women and men in marriage, including consensual unions, civil marriages and customary marriages;
- GUARANTEE a woman's right to own, administer and control property and land;
- MAKE modified or partial community of property the default legal regime for marital property;
- PROVIDE equal rights to women and men in inheritance and succession;
- STATE that conflicts between formal and customary laws are to be resolved in a manner that guarantees equality of women and men and the effective protection of women against any act of discrimination.
- EXCLUDE provisions that allow for exceptions in discrimination, such as adoption, marriage, divorce, devolution of property, burials, other personal matters and customary practices.

Drafters should review existing legislation for compliance with the constitution and ensure that constitutional guarantees are transposed into statutory law.

Promising Practices:

[Ethiopia's Constitution](#) addresses "Rights Relating to Marriage, the Individual and the Family," stating that men and women "have equal rights while entering into, during marriage and at the time of divorce." (Article 31(1)). Additionally, Article 35 "Rights of Women" addresses women's right to equality with men under the Constitution and in marriage, affirmative action in favor of women, and women's right to property and land. The Constitution also states a prohibition against customs and laws harmful to women.

- *Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men (Article 35(1))*
- *Women have equal rights with men in marriage as prescribed by this Constitution. (Article 35(2))*
- *The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions. (Article 35(3)).*
- *The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited. (Article 35(4)).*
- *Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property (Article 35(7)).*

[Malawi's Constitution](#) broadly addresses women's right to equality, irrespective of their marital status, specifically addressing freedom from discrimination in civil law, contracts, property, child custody and upbringing. In terms of marriage, the Constitution guarantees them equal protection of the law with regard to dissolution of marriage, disposition of joint marital property and maintenance. Article 24(1) states:

Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status which includes the right--

(a) to be accorded the same rights as men in civil law, including equal capacity--

(i) to enter into contracts;

(ii) to acquire and maintain rights in property, independently or in association with others, regardless of their marital status;

(iii) to acquire and retain custody, guardianship and care of children and to have an equal right in the making of decisions that affect their upbringing; and

(iv) to acquire and retain citizenship and nationality.

(b) on the dissolution of marriage--

(i) to a fair disposition of property that is held jointly with a husband; and

(ii) to fair maintenance, taking into consideration all the circumstances and, in particular, the means of the former husband and the needs of any children.

In [The Attorney General of the Republic of Botswana v. Unity Dow](#), 103. I.L.R. 128 (Bots. Ct. App. 1992), the plaintiff Unity Dow, a female citizen of Botswana, successfully challenged the legitimacy of Botswana's Citizenship Act on the constitutional ground that the Act unlawfully discriminated against her on the basis of her gender. Under Botswana's Citizenship law, citizenship was denied to the children of a female citizen married to a foreigner. The court of original jurisdiction found, and the appellate court upheld, that the Citizenship Act in this respect unconstitutionally discriminated against women. Significantly, to make this finding, the court rejected the argument that the absence of gender or sex as protected classes in the Botswana Constitution was an intentional reflection of the patriarchal nature of the society. In reasoning to conclusion on this point, the lower court cited to a variety of cases from around the world, including the United States Supreme Court case *South Dakota v. North Carolina*, 12 U.S. 268 (1940), in which Justice White wrote that all of a Constitution's provisions "bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument."

[Uganda's Constitution](#) specifically addresses the right of widow under Article 31, Rights of the Family. Article 31 grants women and men equal rights at and in, during and after marriage, and also states that children may not be separated from parents except by law. The provision also states, "Parliament shall make laws for the protection of the rights of widows and widowers to inherit property of their deceased spouses and to enjoy parental rights over their children."

Addressing customary laws and practices that conflict with formal laws

- Many countries have legal systems that are divided into separate legal systems: formal, customary, and even state-sanctioned customary legal systems may co-exist. Conflicts among these systems, both in the written laws and their application, can arise. While one system may provide protection to women from discrimination, another system may conflict in law or practice to discriminate against women.
- The UN Handbook for Legislation on Violence against Women recommends that conflicts between customary and formal laws should be resolved in a manner that respects the survivor's human rights and principles of gender equality (p. 15).
- In addition, use of a customary adjudication mechanism should not preclude the complainant/survivor from accessing the formal justice system. (UN Handbook for Legislation on Violence against Women, p. 15.)

CASE STUDY: Where different legal systems conflict, legislation should explicitly grant supremacy to those laws that provide for gender equality and advance women's human rights to prevent judicial determinations that otherwise discriminate against women. For example, in India, customary laws discriminated against tribal women in contrast to guarantees of equality in the Constitution. Although the Court acknowledged that customary inheritance laws violated women's right to equality, it found "it was not desirable to declare customary law to be contrary to the rights of women under the Constitution of India and the rules of succession sometimes provide different treatment that is not necessarily equal." (See: Madhu Kishwar and others v State of Bihar and others (1996) 5 SCC 125, in COHRE, [Women and Housing Rights](#), 2nd ed., 2008)

To avoid such results, drafters should ensure that any supremacy laws include outreach to local and customary leaders, as well as members of the judiciary, to facilitate the implementation of these guarantees.

Promising Practices Some governments have recognized customary law and local government authorities' decisions, but invalidate those laws that violate provisions in the constitution or civil code. Drafters should ensure that constitutional or civil code provisions comply with international human rights standards and respect women's human rights.

Malawi: Drafters must take steps to adopt secondary legislation that implements constitutional protections and do so in a timely manner. Malawi's Constitution states that laws shall be enacted to eradicate customs and practices that discriminate against women. Article 24(2) states:

Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as--

- (a) sexual abuse, harassment and violence;*
- (b) discrimination in work, business and public affairs; and*
- (c) deprivation of property, including property obtained by inheritance.*

National plan of action to combat the maltreatment of widows

- Drafters should consider developing a national plan of action to combat the maltreatment of widows. Guidance can be found in the [Beijing Platform for Action](#), which calls upon states to promulgate national plans of action. The Beijing Platform for Action recommends involving broad participation in the plan by national bodies that work on the advancement of women, the private sector, and other relevant institutions, including “legislative bodies, academic and research institutions, professional associations, trade unions, cooperatives, local community groups, non-governmental organizations, including women’s organizations and feminist groups, the media, religious groups, youth organizations and cultural groups, as well as financial and non-profit organizations” (¶¶ 294-95). Drafters should ensure that consultation is carried out with widows and civil society and takes into account the current context. The platform also emphasizes the importance of involving actors at the highest political levels, ensuring appropriate staffing and protocols are in place within ministries, having stakeholders review their goals, programs, and procedures within the framework of the plan, and engaging the media and public education to promote awareness of the plan (¶ 296). The plan should also address the roles and responsibilities of actors charged with implementing the plan. In this case, drafters should seek to engage and charge a wide range of actors as machinery for implementation. Relevant institutions include police, prosecutors, the judiciary, social services, children’s and juvenile authorities, equal opportunities offices, crime victim units, education, public health, prison and probationary authorities, disability agencies, administrative boards, immigration bureaus, cultural, religious, immigrant and ethnic community liaison offices, welfare, housing, religious groups, customary and local officials, offices working on issues related to women and girls, and civil society.
- Drafters should mainstream women and girls’ human rights across diverse agency policies. They should ensure that other national development plans and poverty reduction strategies incorporate the relevant human rights standards related to women and girls into such programming and budgets. (See: [Theme: Addressing Gender Equality: A Persistent Challenge for Africa](#), Joint AU/ECA Conference of Ministers of Gender and Women’s Affairs, Aug. 25-29, 2008, p. 3)

Promising Practice: Sweden has developed an [Action Plan for Combating Men’s Violence against Women, Violence and Oppression in the Name of Honour and Violence in Same-sex Relationships](#). The plan focuses on six main strategies:

- increased protection and support to victims of violence
- greater emphasis on preventive work
- higher standards and greater efficiency in the judicial system
- better measures targeting violent offenders
- increased cooperation and coordination
- enhanced knowledge and competence

It outlines several measures pertaining to each of the six strategies. In developing the plan, the Swedish Government adopted an overarching policy approach that uses a victim-centered approach and draws upon research. Its policy “overrid[es] ministry and agency lines, with the perspective of those at risk as the point of departure and based on the knowledge available on the areas concerned.”

Definitions and forms of maltreatment of widows

Definition of maltreatment of widows

Drafters should recognize that the maltreatment of widows encompasses various types of human rights violations. Widows face maltreatment that includes domestic violence, sexual assault, forced marriage, trafficking, property grabbing, conversion of property, forced evictions, as well as discrimination against women in regard to marriage, its dissolution and divorce, property and land rights, children and inheritance. Civil and criminal laws must address and prohibit all of these forms, protect the rights of women and girls, provide a legal remedy, and promote accountability for perpetrators.

Defining discrimination against women

Legislation should broadly define discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

(See: [Convention on the Elimination of All Forms of Discrimination against Women](#), Article 1) Legislation should also recognize that widows are entitled to freedom of movement, to access to social, educational or health services, to choose her residence, diet, attire and lifestyle, as well as equality with men in terms of citizenship. (See [Model Charter for the Rights of Widows](#), Art. 4) In addition, legislation should protect widows living with or affected by HIV/AIDS by prohibiting discrimination based on HIV/AIDS in the sale, lease, inheritance or disposition of other property. (See: Canadian HIV/AIDS Legal Network, [Respect, Protect and Fulfill: Legislation for Women’s Rights in the Context of HIV/AIDS](#), Vol. Two: Family and Property Issues, 2009, §5-7)

Discrimination against women with respect to marriage

- Legislation should guarantee women equal rights and responsibilities in marriage with men, irrespective of the form of family or the religion, custom, tradition or legal system under which it is established. Drafters should realize that discrimination against women in marriage encompasses several issues, including their civil status, ability to enter a marriage of their own choosing, legal capacity to own and administer property, right to inherit, nationality, and rights and responsibilities with regard to their children. Legislation should address and prohibit discrimination in all of these areas to promote and protect the rights of widows.
- Legislation should require the free and full consent of both parties to enter into a marriage and fully protect a woman's right to choose, when, if and who she marries. (See: Forced and Child Marriage). Legislation should provide the same legal protections of equality of status between parties in de facto marriages, customary and non-formal marriages as those conferred upon parties in formal civil marriages. Legislation should state that both parents have the same rights and responsibilities for the care, maintenance and protection of children. See: Section on Discrimination against Women with Respect to Children.
- Drafters should repeal laws and prohibit practices that disallow women from entering into contracts; disallow women from accessing financial credit or preconditioning their access on male consent or guarantee; restrict a woman from holding property as the sole owner; disallow women from administering their own business; limit a woman's right to effectively realizing or retaining her right to shared property with a man; limiting a woman's right to seek a remedy before the courts; assigning a woman's testimony or evidence lesser weight than a man's before the law, and; restricting women's right to choose her domicile on the same basis as men. Laws should prohibit laws and practices that allow polygamous marriages. (See: [Polygamous Marriages](#) in Forced and Child Marriage Section)
- Legislation should ensure that women enjoy the same right to own, manage, use and dispose of property. Specifically, laws should protect women's right to own, administer and dispose of equal shares of property during marriage and at its dissolution. Drafters should repeal or amend laws that grant males a larger share of property at the dissolution of a marriage or upon a spouse's death. Upon division or distribution of joint marital property, legislation should accord equitable weight to monetary and non-monetary contributions, including unpaid domestic labor or agricultural work, to that property. Finally, legislation should ensure that women have an equal right as men to be beneficiaries of agrarian reforms and land redistribution schemes. (See: Section on Discrimination against Women in Land and Property Rights).
- Legislation should ensure that wives and husbands are entitled to inherit on an equal basis, including in equal shares and equal rank in the line of succession, upon the death of the spouse. Drafters should repeal any laws that prevent women from inheriting on an equal basis as men or that grant restricted rights of

inherited property to a woman. (See: Section on Discrimination against Women in Inheritance).

- Legislation should make modified or partial community of property the default legal regime with regard to marital property. (See: Section on Marital Property Systems)

(See: CEDAW, [General Recommendation 21, Equality in Marriage and Family Relations](#))

Discrimination against women with respect to children

- Legislation should state that laws and practices that deny women equal rights and responsibilities with regard to their children constitute discrimination against women. Drafters should repeal laws and prohibit practices that automatically transfer guardianship to someone other than the mother upon the father's death or dissolution of the marriage. Legislation should prohibit practices that allow a testator to will the guardianship of children to a person not their mother and state that any such provisions that do so are null and void.
- Laws should state that both parents, regardless of marital status, share equal rights and responsibilities for their children, including with regard to their guardianship, wardship and trusteeship. In cases where a child is conceived and born of an act of sexual assault, however, legislation should deny these equal rights, custody, guardianship, wardship and visitation privileges to the biological father who committed the rape.
- Law should state that a child has the right to know and be cared for by his or her parents, and the right to his or her identity, including family relations. Laws addressing the maltreatment of widows should state that a child may not be separated from the mother/widow against her will upon the death of the husband/father.

Discrimination against women in land and property rights

- Legislation should guarantee women equal rights as men to conclude contracts and to administer property. Specifically, legislation should grant women the independent right to enter a contract and access credit without requiring her husband or male relative's permission or guarantee. Laws should treat women and men equally in all stages of procedure in courts and tribunals.
- Land reform and redistribution programs should ensure women's right to be a beneficiary of these schemes on equal terms with men. Legislation should take into account traditional roles and how it may impede women's access to land in registration systems. Administrative forms that employ the "head of household" concept discriminate against women in practice and should either be eliminated this concept or else include other measures to ensure women's equal access. For example, land redistribution programs that require registration by the household head should ensure that such land is titled jointly in both spouses' names, even if only one spouse registers.

Discrimination against women in inheritance

Legislation should state that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession. Legislation should extend this equality of status in inheritance to intestacy cases. Drafters should repeal laws and prohibit practices that discriminate against women and girls in inheritance, including: disallowing females to inherit from their husbands or fathers, preventing women and girls from inheriting equal shares or on an equal rank as males, disallowing them from executing a will, curtailing the full inheritance rights of female heirs to only limited or controlled rights or only income from the deceased's property.

(See: CEDAW, [General Recommendation 21, Equality in Marriage and Family Relations](#).)

Definition of criminal sexual assault

- The definition of sexual assault should state that:
 - It is an act of physical or sexual violence against a person.
 - The victims can be male or female. See [Model Strategies](#), p. 18; and the [Combating of Rape Act \(2000\) of Namibia](#).
 - It is a violation of a person's bodily integrity and sexual autonomy.
 - It is not a violation of morals or decency, or a crime against the family.
 - (See: [UN Handbook](#) 3.4.3.1 and [Council of Europe Recommendation Rec\(2002\)5, #34](#).)
 - Proof of penetration is not required.
 - Force or violence is not required. Use of force should be an aggravating factor.
 - (See: [Sexual Assault](#))
- Sexual contact obtained without consent is often obtained not only through force, but also through coercion. Coercion can cover a wide range of behaviors, including intimidation, manipulation, threats of negative treatment (withholding a needed service or benefit), and blackmail. (See [Sexual Assault](#), Stop VAW).
- Legislation should explicitly define "widow cleansing" as a form of sexual assault, or nonconsensual sexual contact. In widow cleansing, community expectations and pressure may coerce a widow to have sex with a cleanser or her husband's relative to cleanse her of her deceased husband's spirit. Drafters should ensure that laws prohibiting sexual assault are applicable to the offense of widow cleansing. Drafters should take all appropriate measures to ensure that customary practices and laws do not authorize or condone "widow cleansing" and that perpetrators are punished.

- Drafters should also ensure that marital rape, including rape in levirate and sororate marriages, is a punishable crime. (See: [Marital and Intimate Partner Sexual Assault](#), StopVAW, The Advocates for Human Rights) Levirate marriage is the forced marriage of a widow to the brother of her deceased husband; sororate marriage is the forced marriage of the sister of a deceased or infertile wife to marry or have sex with her brother-in-law, the widower/husband. (See: Section on Criminal Laws)

Definition of domestic violence

- Legislation should include a broad definition of domestic violence that includes physical, sexual, psychological and economic violence. In 2008, a group of experts at meetings convened by the United Nations recommended that “any definition of domestic violence that includes psychological and/or economic violence is enforced in a gender-sensitive and appropriate manner. Legislation should include the following provision in a definition of domestic violence: “No marriage or other relationship shall constitute a defence to a charge of sexual domestic violence under this legislation.” (See: [UN Handbook](#), 3.4.3.1)
- Drafters should strive to make the scope of persons to be protected by a domestic violence law clear and reflective of current reality and the dynamics of widow maltreatment. The scope of domestic violence legislation has, in many countries, been expanded to include not only married couples but those who are or have been in intimate relationships, as well as family members and members of the same household. (See: [UN Handbook](#), 3.4.2.2) Legislation protecting widows from domestic violence should ensure that the scope of persons includes widows’ in-laws, including parents, siblings, aunts, uncles and cousins of the deceased, as well as any other heirs of the deceased under intestacy or customary laws.

(See: [Domestic Violence](#))

Definition of trafficking

Legislation should prohibit the trafficking of widows into forms of exploitation, such as prostitution or forced marriage, and punish perpetrators. Drafters should define sex trafficking to include:

- The acts of: recruitment, receipt, enticement, harboring, obtaining, providing, transferring, or transportation of persons;
- The means of:
 - By any means (recognizing that no one can consent to being trafficked for the purpose of sexual exploitation); **or**
 - By one of the following means to achieve the consent of a person having control over another person, for the purpose of exploitation (except where the trafficking victims are under age 18):
 - Threats or use of force; or

- Other forms of coercion, of abduction, of fraud, of deception; the abuse of power or a position of vulnerability; or
- The giving or receiving of payments or benefits to achieve the consent of a person having control over another person; **AND**
- The purpose of: Sexual exploitation, which must include at a minimum, the exploitation of the prostitution of others.

Drafters should ensure that the means element of the definition of sex trafficking is not a required element for the sex trafficking of children. (See: [Sex Trafficking of Women and Girls](#))

Definition of forced marriage

- Drafters should ensure that a definition of forced marriage includes, at a minimum, the absence of free and full consent of one or both parties. Laws and human rights documents generally describe forced marriage as a union that lacks the free and full consent of both parties. The [European Parliamentary Assembly Resolution 1468 “Forced Marriages and Child Marriages”](#) (2005) defines forced marriage as the “union of two persons at least one of whom has not given their full and free consent to the marriage” (¶ 4). (See: [UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage](#) (Art. 1(1)) and [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) (Art. 6(a)), which both state that marriage may only take place upon the “free and full consent” of both intending parties)
- When constructing the definition of forced marriage, drafters should consider how to define and establish consent in forced marriages. Drafters may look to other states’ laws, which have used terms, such as “free,” “full,” “mutual,” “voluntary,” and “informed,” to describe consent. Laws should include the following elements in a definition of consent: free, informed, and not extracted under pressure or vitiated by external factors, such as constraint. Drafters may wish to include legal commentary explaining that consent is absent when family members use “coercive methods such as pressure of various kinds, emotional blackmail, physical duress, violence, abduction, confinement and confiscation of official papers” in an arranged marriage, thus denying one or both parties the option of refusal. (See: [Explanatory memorandum](#), Council of Europe Parliamentary Assembly, Section II.A.1.b.16-17, 2005)
- Legislation should state that levirate and sororate marriages, which require a woman to marry her brother-in-law, constitute forced marriage and are prohibited. Levirate marriage is the forced marriage of a widow to the brother of her deceased husband; sororate marriage is the forced marriage of the sister of a deceased or infertile wife to marry or have sex with her brother-in-law, the widower/husband. Legislation should also address and prohibit polygamous marriages under the rubric of forced marriage.

(See: [Forced and Child Marriage](#))

Definition of forced evictions

- Legislation should prohibit the forced eviction of widows and their children. A definition of forced eviction should include the following basic elements:
 - involuntary removal of a widow or the widow and her children from the marital residence or land;
 - using either force or coercion;
 - without access to appropriate forms of legal or other protection.

- The [Office of the High Commissioner for Human Rights Fact Sheet No. 25](#) defines forced eviction as:

“the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State. It entails the effective elimination of the possibility of an individual or group living in a particular house, residence or place, and the assisted (in the case of resettlement) or unassisted (without resettlement) movement of evicted persons or groups to other areas.”

- The [Centre on Housing Rights and Evictions \(COHRE\)](#) further describes “forced eviction” as:

“The permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. Forced Evictions are a particular type of Displacement which are most often characterized by (1) a relation to specific decisions, legislation, or policies of States or the failure of States to intervene to halt evictions by non-state actors; (2) an element of force or coercion; and (3) are often planned, formulated, and announced prior to being carried out. The UN Committee on Economic, Social and Cultural Rights has stated that “forced eviction are prima facie incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.” See: Committees General Comment No. 7 and OHCHR Fact Sheet No. 25: Forced Evictions and Human Rights. COHRE also notes that the “arbitrary deprivation of women’s housing, land and property—when it is a result of gender-biased norms, policies and practices which negatively affect women” must fall within the state’s obligation to protect all people from forced eviction. This is particularly important because the forced eviction of individual women is often invisible against the more visible, mass scale evictions. See: Centre on Housing Rights and Evictions, [Shelter from the Storm: Women’s Housing Rights and the Struggle against HIV/AIDS in Sub-Saharan Africa](#), 2009.

(See: [OHCHR Fact Sheet No. 25: Forced Evictions and Human Rights](#); Centre on Housing Rights and Evictions, [Fact Sheet No. 3: Women and Forced Evictions](#))

- Drafters should take into account that the marital home may be titled under the deceased's name, and customary or religious systems may transfer ownership of the home to the deceased's relatives. In these and intestacy cases, legislation should guarantee the widow's right to remain in the home with her children as a life interest and state that her remarriage does not terminate this right. Legislation should prohibit a testator from willing the marital home to another when survived by his spouse; any such provision should be construed as null and void.

Definition of property grabbing and adverse possession

Property grabbing

- Legislation should define and address property grabbing perpetrated against a widow by her in-laws and/or other community members. Drafters should either adopt a specific and comprehensive offense for property grabbing or address it through other related offenses. A specific offense of property grabbing should define it as the taking of property of a deceased person from the surviving wife and/or children to whom it rightly belongs. Such property may include the marital home, land, and any other moveable or non-moveable property. Other related offenses include theft, embezzlement or conversion, unauthorized use, and criminal trespass, as well as attempts thereof. Legislation should also address the physical violence or threats that may accompany property grabbing. See: Section on Criminal Laws.
- Laws addressing property grabbing from widows should define theft as the taking of moveable or non-moveable property from a widow's possession. Legislation should outline aggravating factors in theft, such as where the property taken is valuable or important to a widow's livelihood, the taking causes significant loss to the widow in light of her circumstances, the perpetrator takes advantage of the victim's status as a widow or other vulnerability such as HIV status, the perpetrator carries out the taking using a dangerous weapon or threats to the widow and her family, or the taking involves a break-in to the widow's occupied residence.
- Laws addressing property grabbing from widows should define embezzlement or corruption as the taking of assets or moveable property from the widow which are in the in-laws' possession. Legislation should outline aggravating factors, such as where the property or assets are valuable or important to a widow's livelihood, the offense causes significant loss to the widow in light of her circumstances, and the perpetrator takes advantage of his position of particular responsibility, including as an executor of the will.
- Legislation addressing property grabbing from widows should define unauthorized use as the use of moveable and non-moveable property of the widow without her freely given permission. Aggravating factors should include the perpetrator's use of the property to seek significant monetary benefit or significant loss or inconvenience to the victim.

- Legislation addressing property grabbing from widows should define criminal trespass as taking possession of, moving or hiding moveable property that is in the widow's possession, the use of land in the widow's possession without her freely given permission such as by farming, excavating, burying humans or animals, grazing animals, or taking possession of land or building that is in the widow's possession.

Adverse possession

Legislation should also address other insidious forms of property grabbing, such as adverse possession tactics. Legislation should describe adverse possession as an act by which one party possesses the land of another until she or he can claim legal title to it. Generally, the elements may require possession to be real, open, notorious, exclusive, hostile, under the guise of a claim or right, continuous and uninterrupted for a specific time period. Drafters should ensure that a definition is sufficiently broad to encompass different adverse possession tactics. For example, the deceased's relatives may plant crops on the fringe of a widow's land to shift boundaries which may constitute an attempt to adversely possess a portion of her land.

Civil laws

Family law and marriage laws

Legislation on marriage should protect women's rights and guarantee equality. At a minimum, family and marriage laws should guarantee equal rights and responsibilities between women and men in marriage, divorce and dissolution; ensure that all marriages involve the free and full consent of both parties; establish a registration system for all marriages and births; provide for a marital property system that protects women's right to equality; protect the rights of widows and girls to inherit; prohibit polygamous marriages, and; guarantee both parents equal rights and responsibilities with regard to children during marriage, divorce, dissolution, as well as with regard to children born outside of marriage. Drafters should ensure any constitutional protections against discrimination in marriage are codified in statutory law to ensure effective protection of women and girls.

CASE STUDY: Legislation should ensure that constitutional protections are implemented by and promoted in civil laws. Uganda's Constitution (1995) provides constitutional guarantees to protect the rights of women in marriage. Importantly, it establishes the minimum age for marriage at 18 years, guarantees equal rights to both parties at, during and upon dissolution of the marriage, and it specifically requires Parliament to legislate protections for widows and widowers in inheritance and the parental rights of their children:

"(1) Men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.

(2) Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.

(3) Marriage shall be entered into with the free consent of the man and woman intending to marry.

(4) It is the right and duty of parents to care for and bring up their children.

(5) Children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law. Affirmative action in favour of marginalised groups" (Art 32)

While Uganda's Constitution provides equality and protections to women, its Succession Law conflicts and actually subtracts these rights. (See: Section on Inheritance Laws)

Drafters should ensure that these protections extend to consensual and non-formal unions and customary marriages. Drafters should pass laws subjecting consensual, religious and customary unions to the same laws governing civil unions. For example, [South Africa's 1998 Recognition of Customary Marriages Act](#) guarantees the same legal rights to women in customary marriages or civil marriages if they are registered.

Promising Practice: When faced with legal pluralism on marriage, legislation should uphold the legal system that best advances women's human rights and prevents discrimination. In *Bhewa v. Government of Mauritius*, Mauritius Supreme Court 1990, a Muslim couple challenged the right of the state to require civil marriage and its accompanying rights and requirements where there are both a civil and customary legal system, or whether such civil laws are unconstitutional under the Constitution that provides freedom of religion and freedom from discrimination on the basis of religion. The court found in favor of the state holding that the two systems, the civil laws and the "personal laws" co-exist but in their own respective spheres. When religion dictates certain requirements on marriage and tries to have those requirements have the force of law, it impermissibly steps out of its sphere. In this case, the Muslim couple's desire to apply certain Muslim laws addressing marriage, divorce and devolution of property and permitting polygamy is not guaranteed by the constitution, because these practices violate civil laws for protection of the common good and prevention of discrimination against women. The appeal by the petitioners was dismissed.

Marriages

Free and full consent in entering a marriage

Legislation on marriage should require the free and full consent of both parties. To ensure to ensure that consent is freely and fully given, laws should provide the mechanisms necessary to determine valid consent. For example, laws should require the physical presence of both parties and witnesses as a means of establishing consent. Drafters should require consent to be expressed in person by the parties and in the presence of an authority competent to formalize the marriage and in the presence of witnesses. To combat nonconsensual marriages, drafters should not confer legal recognition to marriages by proxy, but instead require the presence of both parties plus witnesses at the legal proceeding for the marriage. Laws should authorize a registrar to interview both parties prior to the marriage where there are doubts about free and full consent. For example, Norway provides a mechanism allowing an official to interview both parties to ensure they have consented to the marriage. (See: [Forced and Child Marriage](#))

Abolition of bride price

Legislation should prohibit the practice of bride price, or where payments or goods, such as livestock from the groom's family are made to the bride's family in exchange for the bride. Alternatively, drafters should consider reforming bride price practices so that bride price payment is considered a non-refundable gift. Legislation should state that bride price is not a condition for solemnization of a customary or other marriage. Where a bride price has been paid, legislation should prohibit the deceased's family from demanding the bride price back from the widow in return for the marital land and property.

CASE STUDY: The Tororo District Council in Uganda passed the Bridal Gift Ordinance in 2008, stating that any bride price becomes a non-refundable bridal gift. Guidelines for implementation, outreach and public awareness is important to facilitating effective implementation. (See: Tororo District Passes the Ordinance Bill 2008 on Bride Price, [MIFUMI Newsletter](#), Oct. 10, 2010; Thiara, Ravi K. and Gill Hague, [Bride Price, Poverty, and Domestic Violence in Uganda](#), MIFUMI, 2010)

Annulment of a forced marriage and divorce

- Drafters should consider the legal options for the survivor/complainant to end a levirate, sororate or other forced marriage. Laws should guarantee to women the same rights and responsibilities at the dissolution of a marriage as men. Laws regarding annulment of a marriage should safeguard both parties' rights to property and guarantee them information regarding the proceedings. Any options for ending a marriage should protect her rights, including those related to property, child custody, immigration status and support.
- Laws may annul a marriage as void or voidable. Voiding a marriage does not require a formal decree and will render the marriage as though it never existed.

Statutes generally void a marriage under certain fundamental conditions, for example, an absence of voluntary consent, a party is already married, a party is not of legal age, or the parties are related within a certain number of degrees. Drafters should carefully evaluate the context and survivors involved when determining whether to annul forced marriages as void or voidable.

- Drafters should be aware of civil laws that may negatively impact the status of children or property rights when a marriage is automatically voided. The Newham Asian Women’s Project noted that children borne of voided marriages will be regarded as illegitimate in the UK unless both parties held a reasonable belief that the marriage was legitimate and the husband’s residence is in England or Wales. In contrast, a voidable marriage requires a formal court decree for termination. Laws should not impose time restrictions upon when a party may seek to annul a marriage, but may instead increase the presumption of the marriage’s validity with time. If a marriage is voided and automatically renders the child’s status as illegitimate, that may negatively impact not only the children but also the widow’s right to her natal property, as her family may perceive its subsequent devolution to the child as leaving the family line.
- Drafters should eliminate any compulsory waiting periods for divorce aimed at facilitating reconciliation between parties in a forced marriage. Laws should not grant legal recognition to religious traditions that deny women due process in divorce proceedings. Divorce should only be recognized through formal legal mechanisms. For example, by saying “talaq” or “I divorce you” three times, a man can divorce his wife under Sunni Muslim tradition. Women who have been so divorced lose their home and financial support. Laws should not only prohibit this practice but also establish a legal process and legal aid resources for women to assert claims for marital support, child custody and property claims against husbands who have left them in this manner.

(See: [Forced and Child Marriage](#))

Polygamous marriages

- Legislation should prohibit polygamous marriage, which discriminates against women and has severe impacts on additional wives. For example, the death of the husband can diminish what security of tenure the additional wives may have, particularly when their inheritance is denied or fragmented. Women in polygamous marriages face difficulties, particularly where polygamy is prohibited or laws restrict registration to only one wife. These situations result in unofficial—and therefore unrecognized—marriages for the additional wives that are outside the reach of marriage laws. Both the Human Rights Committee and the Committee on the Elimination of Discrimination against Women have found that polygamous marriages discriminate against women and recommend their prohibition. Permitting the practice of polygamy violates Article 3 of the ICCPR (equal rights of women and men). Article 5(a) of CEDAW, which requires States Parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either

of the sexes or on stereotyped roles for men and women.” Furthermore, a polygamous marriage violates a woman’s right to equality in marriage and has severe financial effects on her and her children. CEDAW, [Gen. Rec. 21](#), ¶ 14. In these cases, additional wives lack the legal standing to assert their claims to property because their marital status lacks formal recognition or is even prohibited. Upon their husband’s death, these additional wives are excluded from property entitlement.

- Legislation should address the inheritance and property rights of women who are currently in polygamous marriages. For example, laws should state that each surviving widow is entitled to a life interest in the marital home in which they lived with the deceased. In cases of intestacy, widows should each receive a preferential share of the estate, with different amounts depending on the length of the marriage and the number of minor children.

CASE STUDY: Inheritance laws that provide for additional wives do provide added protection for these women, but do not eradicate the inherent problems polygamous marriages pose. Wives are often forced to divide an already small inheritance portion. Also, additional wives may still be cut out of a fair share of inheritance to the first wife or the first wife’s children. While drafters should enact legislation to ensure all wives can inherit from the deceased spouse’s estate, they should also take steps to prohibit polygamous marriages going forward.

For example, Zimbabwe recognizes inheritance rights for additional wives, but leaves the wives to divide this portion amongst themselves. The [Administration of Estates Act](#) provides that each wife is granted the home she lived in at the time of her husband’s death, and shares a third of the remaining property, with the senior wife getting the largest share.

In *Scholastica Benedict v. Martin Benedict* (Court of Appeal of Tanzania, 1993), the decision by the Court of Appeal of Tanzania was the culmination of seventeen years of litigation between two widows over the right to the house and property of their deceased husband. This case is an example of the harmful effects of polygamous marriages on discriminatory laws. The second (junior) wife, who had one daughter by the deceased, had appealed the decision of the lower court upholding the application of customary law in favor of the inheritance rights of a male heir, who was the eldest son of nine children by the first (senior) wife, over the second wife’s matrimonial rights to reside with her unmarried daughter in the home in which they had lived with the deceased for over fifteen years. The Court held that any marital right the second wife had to reside in the house in which she had lived with the deceased was contingent on whether her daughter had a right to the property that was superior to the male heir’s right. Since the male heir’s right took precedence, even though he, the first wife, and eight other children resided in another house, the lower court decision and order evicting the second wife and her daughter from the home was upheld.

Registration of marriages

Drafters should ensure that laws require the registration of births, deaths and marriages as a means of tracking marriages and parties' ages. Drafters should ensure that registration is required for all marriages, including both civil and customary unions. Data gathered through registration systems should be used to monitor and facilitate enforcement of the minimum marriage age standard, as well as compile statistics on marriages. Laws must take into account illiteracy rates that may prevent parties from registering their marriages. Drafters should provide for oral registration and an alternative signature, such as a fingerprint, and fund and train local civil society to provide free assistance in customary marriage registration.

Promising Practice: [Sierra Leone's Registration of Customary Marriages and Divorce Act](#) (2007) requires the registration of customary marriages. Either or both parties must notify the local council in writing within six months of the marriage. The registration must state the names of the parties, place of domicile, and that the conditions necessary for the customary marriage have been met. Any person who objects to the validity of the marriage under customary law may file an objection in the court. This latter is an important mechanism for civil society to monitor compliance with the law. The law prohibits marriages of children under 18 years of age unless their parents/guardians have consented. The law prohibits additional marriages under customary law when a Muslim, Christian or civil marriage already exists and vice versa. (See: [Forced and Child Marriage](#))

Equal rights and responsibilities in marriage

Legislation should guarantee equal rights and responsibilities to women and men in marriage. See: Section on Defining Discrimination against Women.

CASE STUDY: Legislation should develop and promote the use of a model marriage contract to protect the rights of women and widows. [Global Rights](#) has undertaken an initiative to promote women's use of the marriage contract to secure their rights in the Maghreb region. The Moroccan Family Code (Article 47, 48), Algerian Family Code (Article 19) and 1956 Tunisian Personal Status Code (Article 11) allow spouses to negotiate and incorporate additional clauses into the marriage contract. Women can use these contracts to protect their rights in marriage and at its dissolution by stipulating clauses on property ownership and division, children, monogamy clauses, her right to work, accounting of unpaid contributions to the household, and matters requiring her consent. For example, the Model Marriage Contract addresses property rights and financial relations, allowing spouses to stipulate ownership, administration, use and disposition of property acquired prior to the marriage and during the marriage.

Spouses may consider establishing an equitable and rights protective framework for their financial relations in the marriage contract on the following issues:

- *Contribution to household obligations: The contribution of each spouse in money, property and/or efforts to household obligations, and clarification of all costs considered household expenses;*
- *Financial maintenance: The husband's financial obligations towards his wife and children after dissolution of the marriage;*
- *Property ownership and division: Definition of personal property and joint property (money, movable property, real estate), ownership of assets during marriage, powers to use, manage and dispose of personal and/or joint property during marriage, and division of property upon dissolution of the marriage.*

Likewise, the contract includes a section for spouses to address children:

On Child Custody:

Custody of any children shall be shared jointly by the spouses for the duration of the marriage and in order to protect the children's interests and attend to their upbringing.

In the event that the present marriage is dissolved, the father hereby undertakes not to take legal action to have child custody removed from the mother on the grounds of (insert grounds in the national laws according fathers the right to have child custody automatically removed from the mother, such as her remarriage or relocation far from the father), but to base any such legal action solely on other objective grounds related to the best interests of the child.

On Child Guardianship:

Legal guardianship of any children shall be shared jointly by the spouses for the duration of the marriage as well as following its dissolution. The husband hereby designates the wife as the testamentary guardian of any children.

The development of such a model contract should be made in consultation with women, widows, civil society and take into account the current context. (See: [Global Rights, Conditions, Not Conflict: Promoting Women's Human Rights in the Maghreb through Strategic Use of the Marriage Contract, 2008](#))

Children

Legislation should guarantee to women and men the same rights and responsibilities with regard to matters relating to their children, including guardianship, wardship, trusteeship and adoption. [CEDAW](#), Art. 16(1)(d),(f). Laws and practices that remove the child from a widow's custody upon the death of her husband violate women's rights to be free from discrimination in marriage and family relations. Drafters should ensure that widows automatically become the guardian of their children upon the death of their husband. Laws should recognize that every child is entitled to enjoy parental care and protection and has the right to reside with his or her parents. [Protocol to the African Charter on the Rights and Welfare of the Child](#), Art. 19(1); [Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa](#), Art. 20(b). Separation of a child from his or her parent against the child's will should be barred save in circumstances where a competent authority has determined in accordance with law and procedures that such separation is in the child's best interests. [Protocol to the African Charter on the Rights and Welfare of the Child](#), Art. 19(1); [Convention on the Rights of the Child](#), Art. 9(1).

Administration of property and entering into contracts

Legislation should grant equal rights to both spouses to administer property and enter into contracts.

Promising Practice: [Namibia's Married Persons Equality Act of 1996](#) repeals restrictions placed on the wife's legal capacity to enter into contracts and litigate, including restrictions on her capacity to:

- (i) to register immovable property in her name;*
- (ii) to act as an executrix of a deceased estate;*
- (iii) to act as a trustee of an insolvent estate;*
- (iv) to act as a director of a company; and*
- (v) to bind herself as surety; and*

(b) that the common law position of the husband as head of the family is abolished, provided that nothing herein shall be construed to prevent a husband and wife from agreeing between themselves to assign to one of them, or both, any particular role or responsibility within the family(Article 3).

Article 5 states that spouses married in community of property have equal capacity:

- (a) to dispose of the assets of the joint estate;*
- (b) to contract debts for which the joint estate is liable; and*
- (c) to administer the joint estate.*

Marital property systems

- Legislation should provide for a modified or partial community of property system in marriage to best protect women and widows. In the modified or partial community of property regime, property and money obtained during the marriage are considered joint property, even if registered under only one spouse's name. Income and inheritance bequeathed jointly to both spouses (unless stipulated otherwise) are considered joint property. Property and assets acquired before marriage remains separate property and belongs to each respective person. A modified or partial community of property system may offer better protection of women than a full community of property system. For example, in cases where females are not allowed to inherit from their fathers or husbands, they may bring into the marriage their own property, such as stridhan, which belongs to them throughout marriage and at its termination. Allowing a full community of property system that converts her pre-marital property into joint property could jeopardize this protection for women who are otherwise unable to inherit. Also, a modified or partial community of property system may protect women entering a marriage with their own wealth from potential abuse from their husbands. This community of property system may prevent abuse by males who marry seeking wealth and intend to divorce their wives later. It may also prevent abuse by males who marry seeking wealth from the bride and/or her family, which could be a potential risk factor for dowry-related violence. (See: [Dowry-Related Violence](#))
- Both spouses should have equal rights in the joint administration of marital property. In addition, both spouses should be entitled to joint titling of major assets, including the land and house, which requires the consent of both parties for mortgage, lease or sale. An absence of documentation to the contrary should create the presumption of joint titling over major assets for married persons.

(See: Knox, Anna, et al., [Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women's Property Rights](#), International Center for Research on Women; Canadian HIV/AIDS Legal Network, [Respect, Protect and Fulfill: Legislation for Women's Rights in the Context of HIV/AIDS](#), Vol. Two: Family and Property Issues, 2009)

Promising Practices

Turkey: Drafters should amend legislation to provide for modified or partial community of property as the default system unless both parties mutually opt out before a notary or other authority. Turkey introduced legal reforms in its civil code that promote women's human rights with respect to marital property. Prior to the reforms, Turkey's default marital property system was complete separation of property, where each spouse is the owner of any property registered under his or her name. As most property tended to be registered under the husband's name, this deprived women of much of the marital property upon dissolution. The reforms introduced a default system of equal division of acquired property, so that both spouses receive an equal portion of all property acquired during the marriage. Each spouse retains individual ownership rights over his or her personal property, or that acquired prior to the marriage or received as personal gifts during the marriage. Also, amendments grant both spouses equal rights over acquired property and the marital home. The law is not retroactive to property acquired prior to 2002, however, unless spouses registered their marriage before 2003. (See: Centre on Housing Rights and Evictions, [In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance rights in the Middle East and North Africa \(MENA\) Region](#), 2006; Women's Ways for Human Rights, [Turkish Civil Code](#))

Ethiopia: Drafters should adopt legislation to recognize non-formal, consensual unions and ensure that marital property laws extend to these unions. Ethiopia presumes joint property in the absence of documentation, with the default being partial or full community of property. It mandates joint administration of marital property that requires the consent of spouses. Also, Ethiopia recognizes consensual unions providing they have existed for a minimum of three years and are registered.

Morocco: Morocco amended its Family Code in 2004 and introduced a number of provisions to promote gender equality. The code grants husbands and wives joint responsibility for the family and grants adult women the right to exercise self-guardianship freely and independently. It also allows for the spouses to develop in a written document an agreement for management of assets acquired during the marriage. Where the parties disagree, a judicial determination based on the rules of evidence will be made to ascertain each party's contribution to the development of the family's assets. (See: Centre on Housing Rights and Evictions, [In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance rights in the Middle East and North Africa \(MENA\) Region](#), 2006)

- Drafters should repeal laws that institute the following marital property systems as the default regime and convert them to optional systems that both spouses mutually agree to before a notary public or other competent authority:
 - Division of shared property based on use: This system gives property to the spouse who acquired it, unless the property was used jointly by both spouses or for the family. Basing division of property on use is ambiguous and does not promote gender equality.

- Separation of property: Each spouse personally owns his or her property acquired prior to marriage, as well as property acquired during marriage that is registered in his or her name or received as a personal gift or inheritance. In regions where most property is registered under the man's name, this system has a discriminatory impact on women upon dissolution as she has no title and therefore no claim to those assets.
- Absolute or full community of property: All property acquired by both spouses prior to and during the marriage becomes community of property. In states where women are denied equal inheritance rights as men, the personal property, assets, dowry, and inheritance they bring into a marriage is an important reserve for them. An absolute community of property system denies them this safeguard in the event of dissolution or separation. Also, in regions where dowry and dowry exchange is practiced, or where talaq divorce under Sunni Muslim tradition is recognized, it may increase their vulnerability to domestic violence and denial of due process in divorce proceedings.
- Drafters should replace these systems with modified or partial community of property systems as the default regime.

Women's unpaid contribution to the household

Legislation should also ensure that marital property systems account for women's informal contribution to joint marital property. Laws should recognize women's unpaid domestic labor, childrearing, and agricultural work as contributions to the value of marital property. A marital property system that provides for equal division of all property acquired during marriage (except for personal gifts to one spouse) upon dissolution achieves this recognition of women's unpaid contribution to the household and marital property.

CASE STUDY: A formal system of accounting for women's unpaid labor and contributions may strengthen their inheritance claims. Such a system may avoid the harmful effects of a case such as *Gyamaah v. Buor* (Ghana High Court, 1962). In this case, a widow who assisted her husband, the deceased, in developing and cultivating eleven cocoa farms sought a court order declaring that she was entitled to a share of the farms upon his death. Ownership of the farms had passed to others, who were the heirs through customary laws of inheritance. The lower court held in favor of the widow's right to a share of the property on the grounds that she had assisted in the cultivation of the farms. On appeal, the high court overturned the lower court order, holding that the widow had no right to the property, and could receive a share of the property only because the heir had previously agreed to share an unspecified portion of the property with the widow. The court held that, based on the custom of the parties, the wife was not entitled to any specific share of the property, but would receive "however little," the defendant heir might choose to give her, in his absolute discretion. Significantly, the high court opined that had the widow's assistance been in the form of a substantial financial contribution, she would have been "entitled as of right to a share in the properties acquired by her husband," but a contribution of labor alone would not give the widow such right.

Information gathering and monitoring

- Legislation should require a comprehensive review of all formal and customary laws to ensure equality of rights and responsibilities in marriage between women and men. Legal reviews should pay particular attention to achieving consistencies among and within laws. For example, drafters should ensure that statutory laws comply with and transpose constitutional provisions that guarantee equality to women in marriage and family relations.
- Legislation should mandate that customary and religious systems grant women and men equal rights and responsibilities in marriage, or legislation should state that civil statutory provisions guaranteeing equality will have supremacy over other discriminatory systems. Legislation should state that conflicts between civil and customary or religious laws are to be resolved in a manner that promotes gender equality and respects women's rights. Drafters must provide for public awareness and outreach about these laws to communities and religious and traditional leaders to facilitate implementation.
- Legislation should require studies on laws and practices throughout the country to understand the nature and extent of discrimination against women and girls in marriage and property regimes. Such studies should examine formal marriages, de facto marriages, consensual unions, polygamous marriages (if applicable), and customary marriages. Legislation should establish and support monitoring mechanisms to evaluate implementation of laws governing equality in family relations and marriage.

Inheritance laws

Equal rights in inheritance

- Legislation should prohibit discrimination against women and girls in inheritance and explicitly allow females to inherit property and land on an equal basis with males. Laws governing lines of succession should ensure equality of rank between mothers and fathers, between brothers and sisters, between daughters and sons, and between spouses. Legislation should state that civil laws shall have supremacy over customary laws and practices that discriminate against women and girls.
- Legislation should state that, upon remarrying, a surviving spouse retains the full rights in any property she inherited from the deceased's estate. Drafters should repeal any laws that terminate interests upon remarriage for the widow, but not the widower. (See: Canadian HIV/AIDS Legal Network, [Respect, Protect and Fulfill: Legislation for Women's Rights in the Context of HIV/AIDS](#), Vol. Two: Family and Property Issues, 2009, § 5)

Promising Practice: *Mojekwu & others v. Ejikeme & others* (5 NWLR 402, Nigerian Court of Appeal, December 9, 1999): The two great grandsons and the granddaughter of Reuben Mojekus, who died intestate, appealed the ruling of a lower court in favor of five male members of Reuben's brother's family with regard to the inheritance of Reuben's property. The litigation began with the appellants' request for a restraining order against the respondents, who had trespassed by entering Reuben's compound where the appellants were living. This case involved the practice of "Nnewi," where a man dies without sons but has daughters. A daughter must remain unmarried and bear children who effectively become her dead father's heirs to inherit and carry on the male lineage. The appellants claimed that Nnewi had been performed for Virginia, Reuben's daughter and the appellants' mother and grandmother, which entitled her and her children to inherit Reuben's property. The respondents, on the other hand, claimed that the custom of "Nnewi" had been performed for Reuben's other daughter, Comfort, entitling her and her children to inherit the property, but since Comfort had died childless, Reuben is considered under customary law as having died without a surviving male heir, thereby causing the property to pass to Reuben's brother or the brother's male issue. On appeal, none of these arguments, all of which were based on Nigerian customs, prevailed. Finding that these customs were discriminatory against women and "repugnant to the principals of natural justice, equity and good sense," the court concluded that the appellants, as Reuben's blood relations, were entitled to inherit his estate and that it would be inequitable to throw them out of their home. While not explicitly stated, the court based its ruling on fundamental rights guaranteed to women under the Nigerian Constitution and an international convention to which Nigeria was a party.

Secular legislation

Drafters should enact superseding civil laws to address provisions that discriminate against women and girls in religious laws. For example, Tunisia enacted legal reforms that run contrary to Sharia law in cases where the deceased leaves no sons. Rather than distribute the estate to the paternal family, the Personal Status Code designates the paternal daughters and granddaughters ahead of the deceased's brothers and paternal uncles in succession rank to inherit the father's total estate before eligible heirs. In this case, the line of succession ranks the surviving spouse first, then daughters, then granddaughters. Also, the estate of a daughter who dies before her father goes to her children, rather than her father. (See: Anna Knox, et al., [Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women's Property Rights](#), International Center for Research on Women; Centre on Housing Rights and Evictions, [In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance rights in the Middle East and North Africa \(MENA\) Region](#), 2006; OECD Development Centre, [Gender Equality and Social Institutions in Tunisia](#))

Legislation should enact an optional secular law governing personal matters, including marriage, divorce, dissolution of marriage, inheritance, children and family, that applies to people of any religious affiliation.

CASE STUDY: Lebanon recognizes and entrusts personal status matters to 18 different religious denominations. Consequently, each religious denomination operates independent of the state judiciary and uses its own courts, laws, and procedures on personal status for its members. The result is a fragmented framework of family law as regulated by each religious denomination, which tend to discriminate against women. See: CEDAW, Initial Report of Lebanon, 2004. Lebanon has attempted to codify inheritance in a secular law for non-Muslims. The succession law brings important legal reforms to previous Islamic law, such as the lack of differential treatment based on sex and granting larger portions of the estate to the surviving spouse. It does not, however, apply to Muslims, thereby leaving Muslim women subject to succession rules of Shari'a, which makes several distinctions based on sex. (See: Centre on Housing Rights and Evictions, [In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance rights in the Middle East and North Africa \(MENA\) Region](#), 2006; Section on Family Law and Marriage Laws)

Equal shares between wife and husband in marriage

Legislation should ensure that wives and husbands are entitled to inherit equal shares in a marriage.

CASE STUDY: Legislation should address discrimination against women and girls found in religious laws and ensure they may inherit equal portions to males. Iran's legal system is based on Islamic principles, or the Ja'fari school of Shi'a Islam. Article 913 of the Civil Code governs inheritance between spouses in marriage. On its face, the provision discriminates against women by allocating them smaller shares than men. Where the wife dies, the husband may inherit: $\frac{1}{4}$ of her estate where she has surviving descendants; $\frac{1}{2}$ if she has no surviving descendants, and; 100 percent of her estate if there are no other heirs. When the husband dies, the wife may inherit: $\frac{1}{8}$ of his estate where he has surviving descendants; $\frac{1}{4}$ of his estate where he has no other heirs, and; where he has surviving multiple wives, a equally divided portion of the $\frac{1}{4}$ or $\frac{1}{8}$ portion to be shared with other the wives.

Individuals in Iran have found creative ways to ensure their spouse can inherit as they desire. A testator can bestow a maximum of $\frac{1}{3}$ of his or her estate, leaving the remainder to be divided among the heirs according to law. For example, a husband either purchases property under his wife's name or transfers property titles to his wife's name to ensure she can inherit more than $\frac{1}{3}$ of his estate or the designated share under the Civil Code. Fathers have likewise used the same method to provide for their children. This enables the testator to determine how to designate his estate in spite of the law. (See: Centre on Housing Rights and Evictions, [In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance rights in the Middle East and North Africa \(MENA\) Region](#), 2006)

Equal right to inherit all types of property

Legislation should ensure that wives and husbands are entitled to inherit equal kinds of property. For example, a legal system that states a husband may inherit the entirety of his wife's estate, but she may only inherit moveable chattel and the cash value of buildings and trees on her husband's estate constitutes discrimination against women and should be amended. Such laws discriminate against women in the short- and long-term: land and real property tends to increase in value, while moveable goods have a tendency to depreciate over time. (See: Centre on Housing Rights and Evictions, [In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance rights in the Middle East and North Africa \(MENA\) Region](#), 2006)

Promising Practice: South Africa: In marriages under the default full community or partial community property systems, the widow may inherit all of the joint marital property. The widow will inherit the entire estate if there are no children. Even if excluded from the spouse's will, a widow may still seek maintenance.

CASE STUDY: Legislation should grant equal rights to daughters and sons to inherit irrespective of customary laws. The discriminatory Zimbabwean case of *Magaya v. Magaya* (1999), 3 LRC 35, 40 (Zimbabwe Supreme Court) addressed a daughter's inheritance rights under the Administration of Estates Act 1997. Article 68 of the act states that the estate of deceased is to be administered according to customary law, which favors men over women. The Court examined the issue of discrimination against women where a man with two wives dies intestate, leaving a daughter by the first wife and sons by the second wife. In this appeal to the Supreme Court of Zimbabwe, the daughter of the first wife sought to overturn the decision of a magistrate that where there was a man of the family entitled to claim heirship, a woman of the family could not be the heir, under the customary law of Africa. The daughter based her challenge on international human rights agreements to which Zimbabwe was a party. The justices held that where the marriages were solemnized under customary law, the intestate laws under customary law apply. Noting that the Zimbabwe Constitution's prohibition against discrimination did not include gender (Section 23, which also does not apply to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law), and that, in any event, the Constitution exempted customary laws regarding the devolution of property on death, the justices upheld the decision of the magistrate. The justices justified the decision in favor of the male heir, deeming that the daughter would not honor her obligation to care for her original family due to her commitment to her new family. The justices reasoned that women would be inclined to divert the property of her original family to the new family. The justices believed that sons, on the other hand, would be more likely and able to honor their obligations to both their original and new families. In concurring opinions, the justices found support in a number of analogous laws and cases, including the customary laws of the deceased's tribe, noting that when the marriages are under a tribe's customary law, the customary laws of succession of that tribe control. This decision and its reasoning discriminate against women. Drafters should ensure that women are guaranteed equal inheritance rights with men.

Protecting widows and girls' rights in testate succession

- Legislation should guarantee to both women and men, irrespective of marital status, the capacity to make a will. Drafters should develop guidelines on the forms and procedures of wills for establishing validity. Legislation should state that a benefactor may bestow by will any property to which he or she was entitled to at the time of death by law. Legislation should prohibit a married person from bequeathing the marital home to a person other than the spouse in the will if he or she is survived by the spouse. Legislation should clarify that a person may only bestow by will *his or her own share* in jointly held marital property.
- Legislation should mandate that every will should provide maintenance for dependents, which includes surviving spouses. The Canadian HIV/AIDS Legal Network has developed guidelines on how to determine maintenance:

Article 46. Determination of maintenance

(1) The court shall make an order of maintenance to any and all dependents of the deceased who, in the court's determination, require maintenance in order to satisfy their needs, notwithstanding the provisions of the will, if any.

(2) The court shall determine the nature and amount of maintenance payable to a dependent under this Section having regard to:

(a) the nature and quantity of the property representing the deceased's estate;

(b) the responsibilities and needs which each of the dependents of the deceased has and is likely to have in the foreseeable future;

(c) the lifestyle, income, earning capacity, property and resources which each of the dependents of the deceased has and is likely to have in the foreseeable future; and

(d) the deceased's reasons, so far as ascertainable, for not making adequate provision for a dependent.

(3) Where the dependent is a child, in determining the nature and amount of maintenance the court must have particular regard to:

(a) the financial, educational and developmental needs of the dependent, including but not limited to housing, water, electricity, food, clothing, transport, toiletries, child care services, education (including pre-school education) and medical services;

(b) the age of the dependent;

(c) the manner in which the dependent is being, and in which his or her parents reasonably expect him or her to be, educated or trained;

(d) any special needs of the dependent, including but not limited to needs arising from a disability or other special condition; and

(e) the direct and indirect costs incurred by the parent or guardian of the child in providing care for the dependent, including income and earning capacity forgone by the parent or guardian in providing that care.

(4) Where the dependent has a disability or disabilities, in determining the nature and amount of maintenance the court must have particular regard to:

(a) the extent of the disability;

(b) the life expectancy of the disability;

(c) the period that the dependent would in all likelihood require maintenance; and

(d) the costs of medical and other care incurred by the dependent or their parent or guardian as a result of the disability (Sections (3) and (4) are derived from Namibia, Maintenance Act of 2003, ss. 16(3) and (4))

(5) Where the estate is insufficient to satisfy the maintenance needs of all dependents, the court shall make equitable maintenance orders in accordance with available assets and the factors in Sections (2), (3) and (4).

(See: Canadian HIV/AIDS Legal Network, [Respect, Protect and Fulfill: Legislation for Women's Rights in the Context of HIV/AIDS](#), Vol. 2: Family and Property Issues, 2009)

Restrictions on testamentary freedoms

Drafters should also restrict testamentary freedoms to ensure spouses receive some part of their deceased spouse's estate, which includes the marital home. Legislation should ensure that widows are entitled to an "equitable share in the inheritance of the property of her husband" and have the right to remain in the marital home. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Art. 21(1).

Legislation should prohibit testators from granting guardianship of children to someone other than the surviving spouse, and state that any testamentary provision that does so is null and void. Laws should state that widows automatically become the guardian of their children upon the death of their husband, unless the child's best interests, as determined in accordance with law and procedures by a competent authority, dictate otherwise.

(See: COHRE, [Women and Housing Rights Issue Brief 7](#), p. 8. See: Harmful Practices; UN-Habitat, [Progress Report on Removing Discrimination against Women in Respect of Property & Inheritance Rights](#) (2006))

Protecting widows and girls' rights in intestacy

Inheritance laws should ensure equality between males and females' right to inheritance in cases of intestacy. Laws governing intestate succession should automatically provide spouses a share of the estate, including a life interest and right to reside in the marital home. Some countries provide a succession order in intestate cases, placing widows as the first in line for succession. Legislation should provide widows with the full right to their own property. See: Section on Marital Property Systems. The Canadian HIV/AIDS Legal Network recommends two devolution options for surviving spouses in intestacy: 1) Granting the spouse a set preferential share, and 2) devolve the entire estate, if smaller than a certain value, upon (in order of succession) the surviving spouse and children, the deceased's parents, and the next category of succession.

CASE STUDY: Drafters should repeal or amend any laws that terminate interests upon remarriage for the widow, but not the widower. For example, Kenya's discriminatory Law of Succession Act provides that, in the case of intestacy, a surviving spouse gains an absolute interest in the deceased's personal and household property and a life interest, which terminates upon remarriage (Articles 35, 36), the remaining estate. The life interest does not terminate for widowers upon remarriage. A widow who is forced to marry her husband's relative could thus lose her life interest to her children. Under the law, both female and male children inherit from parents in equal shares in intestacy. In contrast, widowers do not lose their life estate interest upon remarriage. Furthermore, in intestacy, if the deceased is unmarried and has no children, the father is first in the line of succession, then followed by the mother. Furthermore, exceptions under the law further discriminate against women. The law does not apply to Muslims, and exceptions of farmland, crops, and livestock in certain districts result in the application of customary law to this property. Under Kenya's patrilineal system, the estate goes to the deceased's sons; where there are no sons, the deceased is treated as unmarried, thus excluding the widow in both cases. The problem is further exacerbated by Kenya's Constitution, which makes an exception for its anti-discrimination clause in cases of adoption, marriage, divorce, inheritance, other personal matters and in customary law (Article 82). To protect widows' rights under the Law of Succession Act, drafters should repeal: provisions that terminate widows' inheritance upon remarriage, exceptions of land, crops and livestock under this law, provisions that exempt certain groups or religions from the law's reach, and provisions that favor males over females in inheritance.

See: Anna Knox, et al., [Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women's Property Rights](#), ICRW; Human Rights Watch, [Double Standards: Women's Property Violations in Kenya](#), 2003; Rachel Rebouche, [Labor, Land and Women's Rights in Africa: Challenges for the New Protocol on the Rights of Women](#), 19 Harv. Hum. Rts. J. 235 (2006).

CASE STUDY: Drafters should repeal laws that discriminate against women in inheritance and violate their right to equal rights and responsibilities as a parent in matters regarding their children. Uganda’s discriminatory Succession Act diminishes widows’ inheritance and parental rights in contradiction of Article 33(6) of the 1995 Ugandan Constitution of which states, “Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited...” [Constitution of the Republic of Uganda](#).

Under the Act, a male intestate’s principal residence is inherited by the intestate’s heir, designated as the nearest lineal relative – generally the eldest son. [Succession Act, § 26](#). Remaining property is divided among customary heirs, the wife or wives, dependent relatives and lineal descendants. If all classes of heirs are present, the wife or wives receive fifteen percent of the estate while lineal descendants inherit 75 percent. [Succession Act, § 27](#).

Although the nearest lineal relative inherits the primary residence, the widow(s) retains a right of occupancy, to which is tied a right to cultivate any normally cultivated land adjoining the residential holding. [Succession Act, Second Schedule Rules 1-2](#). This right of occupancy is limited, however, and terminates upon a widow’s remarriage or her continuous absence from the premises for six months. [Succession Act, Second Schedule Rules 8](#). In practice, the right occupancy is often terminated based on mere suspicion that the widow is in a relationship; also, in-laws frequently intimidate a widow into leaving the land so as to activate the six-month continuous absence provision. Once the widow loses her right to occupancy, she also loses her right to farm the surrounding land.

Further limitations terminate a widow’s right to occupancy by court order if it is found that “suitable alternative accommodation is available” under which terms the widow would not suffer hardship. [Succession Act, Second Schedule, Rule 9\(b\)](#). A court order terminating occupancy may also be brought if it is found the widow has not complied with the several provisions of Rule 7 of the Second Schedule, which require, among other things, that a widow keep the premises in good repair, farm all land usually farmed, and maintain the holding in the physical and legal state in which it was transferred. [Succession Act, Second Schedule Rules 7, 9](#).

The laws also violate rights protecting the family and child. First, the act allows the husband to designate relatives other than the mother as the children’s guardians in his will. [Succession Act, § 43](#) Second, the deceased’s relatives, including his parents, siblings, aunts and uncles, are entitled to guardianship of the children before the mother in cases of intestacy. The Act details who will be appointed guardian if a deceased father has not made a testamentary guardian appointment, notably excluding the mother as a preferred guardian. In order of preference, guardians are as follows: (1) parents of the deceased; (2) siblings of the deceased; (3) paternal aunts and uncles of the deceased; (4) the mother’s brothers; and finally (5) the mother’s father. [Succession Act, § 44](#).

Read in conjunction with the above-mentioned inheritance provisions which allow for a father's children to receive seventy-five percent of his estate, these custodial provisions create a significant incentive for the intestate's relatives to act upon their right of guardianship. The Children Act provides an additional pathway by which relatives may gain custody by allowing the court to make guardianship appointments based upon a potential guardian's ability to financially provide for the children. For widows who have lost their home and property through the succession law, it poses another challenge for a widow to prove her economic capacity.

Finally, the Succession Act grants the power of administration to that person who is entitled to the largest portion of the intestate's estate. [Succession Act, § 202](#). In most cases, this will be the oldest son as the closest male lineal relative. The administrator's powers are substantial, as he is authorized to "dispose of the property of the deceased...as he or she may think fit," though this discretion is subject to the provisions governing the rights of title and occupancy to residential holdings. [Succession Act, § 270](#).

- Moreover, a lack of enforcement and knowledge about the succession law results in the application of customary law by traditional leaders. Customary laws also discriminate against women, by regarding the woman and her children as property of the husband, subjecting her to widow inheritance, property grabbing and forced eviction, allowing polygamous practices that require her to share the estate with other wives, and designating the administrator and first successor as the nearest male heir.
- Legislation should mandate that customary systems grant women equal inheritance rights with men and should state that conflicts between civil and customary or religious laws are to be resolved in a manner that promotes gender equality and respects widows' rights. Drafters must provide for public awareness and outreach about these laws to communities and religious and traditional leaders to facilitate implementation. For example, Ghana has passed the Intestate Succession Law, providing the surviving spouse a larger share of the estate and rights in the other's property in both statutory and customary marriages that are registered. Implementation has been challenging due to a conflict with traditional family structures, which does not view the widow as part of her husband's family and therefore not entitled to a share in her husband's estate. Outreach is a necessary component to facilitate effective implementation. (See: Elom Dovlo, [International Law and Religion Symposium: Religion in the Public Sphere: Challenges and Opportunities in Ghanaian Lawmaking](#), 1989-2004, 2005 Brigham Young U. L. Rev. 629 (2005))

Ensuring effective administration of inheritance

- Legislation should ensure that either women or men, irrespective of marital status, have standing to administer an estate. Laws should grant the surviving spouse the automatic right to administer the estate. Where the deceased is survived by multiple wives, laws should grant each wife the right to administer her separate marital home, household property within and surrounding residential land; the joint right to administer all other property of the deceased or to select or petition the authorities to designate another administrator. The administrator should be empowered to administer and distribute the estate with the same rights over the property as the deceased would have if alive. Laws should charge the administrator with ensuring a final inventory of the deceased's property is made and sworn to by two non-beneficiary witnesses, and to that end, meet with the surviving spouse and children, investigate title deeds and bank accounts, and consult with community leaders, employers, relatives and neighbors who may have knowledge of the deceased's assets. (See: Canadian HIV/AIDS Legal Network, [Respect, Protect and Fulfill: Legislation for Women's Rights in the Context of HIV/AIDS](#), Vol. Two: Family and Property Issues, 2009)
- Legislation should include public awareness programs aimed at educating traditional, religious and community leaders about widows' human rights and the law, as well as rural and urban women and girls on their human rights, remedies and how to enforce them. Legislation should create and support enforcement mechanisms, such as a police unit, to facilitate women's property and inheritance claims.
- Laws should prohibit compelling an heir to hand over an inheritance share to another third party using force, coercion or fraud. Where a widow or heir chooses to give her share to a male member as a guarantee for their financial support, legislation should provide that a written contract stating the terms of agreement, amount and schedule of support to be provided by the male to the woman, and remedies for breach of contract, and bearing the signatures of both parties and a witness, is required for the validity of such transfer. Legislation should provide for free-of-charge legal aid to inform the woman or girl of her legal rights, the consequences of such a transfer, assist her in drafting the terms of the contract, and oversee its execution. Legislation should require responsible authorities overseeing such transactions to confirm identification and registration numbers before authorization.

Information gathering and monitoring

Legislation should require a comprehensive review of all formal and customary laws to ensure women's have equal rights to housing, land and inheritance. Legal reviews should pay particular attention to achieving consistencies among and within laws. For example, drafters should ensure that statutory laws comply with and transpose constitutional provisions that protect the rights of widows.

CASE STUDIES:

[Ghana's Constitution](#) provides for equality between spouses with regard to inheritance, access to joint marital property, and division of joint marital assets upon dissolution:

- (1) *A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.*
- (2) *Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.*
- (3) *With a view to achieving the full realization of the rights referred to in clause (2) of this article-*
 - (a) *spouses shall have equal access to property jointly acquired during marriage;*
 - (b) *assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage. (Article 22).*

Although Ghana's Constitution prohibits discrimination based on several grounds, including gender, the same article provides an exception with regard to adoption, marriage, divorce, inheritance and "other matters of personal law" (stating that "[n]othing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide...for matters relating to adoption, marriage divorce, burial devolution of property on death or other matters of personal law") (Article 17). Drafters should extend non-discrimination guarantees to all personal matters, including adoption, marriage, divorce, inheritance, where discrimination against women is often prevalent.

Nigeria: Drafters should adopt legislation to override judicial decisions that uphold discriminatory practices or interpret laws in a manner that discriminates against women and widows. In *In the Estate of Agboruja* (19 N.L.R. 38, Nigeria, 1949), the appellate court granted an application by an administrative official for a modification of an order of a lower court that had appointed the half brother of the deceased the legal guardian of the deceased's young children. Under the customary laws of intestacy, the half brother had inherited the deceased's property and had entered into a marriage by inheritance with the widow. The widow had left the half brother after a quarrel, taking along her children with the half brother's consent. The court granted the application to modify the order, thereby revoking the guardianship of the half brother in favor of the mother, but only on the condition that the mother would have the children educated in a Christian managed school. Notwithstanding the decision in favor of the widow, the court affirmed the discriminatory custom of inheritance of widows, whereby the deceased's widow and her children, along with other property, is inherited by the deceased's next male relative, where the deceased and the heir are "pagans." The Court stated that "there can be nothing intrinsically unfair or inequitable even in the inheritance of widows, where those who follow the custom are pagans and not Mohammedans or Christians. The custom is based on the economics of one kind of African social system, in which the family is regarded as a composite unit."

The Nigerian Law Reform Commission, noting numerous calls by various interest groups for prohibition of the practice of widow inheritance, recommended in 2006 that the practice be discontinued altogether (regardless of whether the family involved was pagan or not), in light of significant changes in the social climate. At the same time, the Commission recommended several corresponding or supporting legal changes, including the following. 1) Requiring compulsory registration of marriage, to include confirmation of payment of a bride price and confirmation of voluntary consent to the marriage by both parties. 2) Grant of an automatic right of child custody to a widow. 3) Grant of an automatic status as heirs to the widow and children of a deceased man, except where he had given explicit indication of wishes to the contrary during his lifetime. On the other hand, the Commission recommended not changing the practice, customary in some communities, of allowing posthumous marriage, which serves the purpose of according full status to the children of the man and woman in communities where legitimacy of a person is determined solely by marriage between the parents and something had prevented the couple from carrying out their intent to marry. The Commission noted that although it did not believe this practice should qualify for registration of marriage, it should be left alone because it "affords enhanced protection to women and children and there is nothing in it to suggest that it could in itself be contrary to public policy or public morality." See: 2 Nigerian Law Reform Commission, [Working Paper on the Reform of the Laws on Marriage](#) (2006).

Promising Practice: Uganda's Succession Act, Cap. 162 Laws of Uganda. The Constitution Court has declared the following provisions of this law unconstitutional:

- Art. 27: provides only for male intestacy
- Art. 27: grants a widow 15% of an estate and a widower 100%
- Rule 8(a) of Second Schedule to Succession Act: widow loses her right to live in the marital home upon re-marrying, while a widower loses his right upon death
- Art. 43: the father may appoint a guardian even if the mother is still alive
- Art. 2(n)(i) and Art. 44: Male lineage has precedence over the female lineage in selecting a guardian
- Art. 14: Automatic acquisition of marital home to the wife but not the husband
- Art. 15: Legal separation ends a wife's acquired domicile

It will require Parliamentary action to amend the law and address the gaps created by this ruling. (See Dora Byamukama, [Effectiveness of legislation enacted to address harmful practices against women in Uganda, including maltreatment of widows and female genital mutilation, 2009](#))

Legislation should require studies on inheritance and property laws and practices throughout the country to understand the nature and extent of discrimination against women and girls in inheritance and property rights. Legislation should establish and support monitoring mechanisms to evaluate implementation of these laws and women and girls' inheritance and property claims.

Land and property reform

- Legislation should ensure that women have equal rights to occupy, use, own and inherit land and other commodities; there is an equitable distribution of property upon dissolution of a marriage, and; women can be the beneficiaries of land tenure reform. (See: [Good Practices in Legislation on “Harmful Practices” against Women](#), UN DAW (2009), Section 3.7.1.2)
- Government policies should recognize women as beneficiaries of land rights, without regard to their marital status. Drafters should ensure that laws recognize women's right to administer property and conclude contracts. [CEDAW](#), Art. 15(2).

Promising Practice: Drafters should ensure that women can access land regardless of marital status and sex. For example, Ethiopia grants land allocations to both women and men irrespective of marital status. Eritrea grants individual rights to land to all farmers, irrespective of sex or marital status. (See: Anna Knox, et al., [Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women's Property Rights](#), International Center for Research on Women)

- Titles to land grants to married couple should be jointly granted in both spouses' names.

Promising Practice: Nicaragua requires joint titling of land for married couples and recognizes joint titles even when titled under only the head of household. El Salvador provides a presumption joint ownership of all assets, including land, that belong to a married couple.

- Drafters should ensure that these protections extend to consensual and non-formal unions and customary marriages. Drafters should pass laws subjecting consensual, religious and customary unions to the same laws governing civil unions.

CASE STUDY: Mozambique passed the Family Law of 2004, which recognized customary law and non-formal marriages. It provides a definition of household for purposes of land distribution, as a “set of people living in the same home under the authority of the head of the household, married or in *de facto* union.” While the law's recognition of both formal and consensual unions is a positive measure, designating a “household” as the beneficiary unit for land allocations can be problematic. It may exclude women where traditional heads of households are male or where policies fail to encompass jointly-headed households. Policies should recognize women, irrespective of marital status, as a specific beneficiary group. (See: UN-Habitat, [Policy Makers Guide to Women's Land, Property and Housing Rights across the World](#), 2007)

Land and tenure reform

- Legislation should ensure that laws governing land administration, registration and land reform policies protect the rights of women and promote gender equality. Legislation should promote gender equality in access to land, including the right and opportunity to use, manage, control and administer land and its resources. Legislation should also guarantee that women's access to land is enforceable and secure against illegal seizure. Legislation should ensure that women's access to land is effective both financially and through infrastructure, such as roads, irrigation, and decentralized land administration procedures.
- To ensure women's effective and equal access to land, drafters should review, harmonize and guarantee gender equality across formal laws on property, inheritance, marriage, land use, and legal protection; customary and religious systems; women's traditional status within the household, and; in women's access to education, credit, and income. See: Komjathy, Katalin and Susan E. Nichols, [Women's Access to Land - FIG Guidelines](#), International Federation of Surveyors; Global Land Tools Network, Shared Tenure Options for Women. Drafters should also undertake baseline studies and assessments to gain knowledge of the local situation, customs and practices. Studies should include a special focus on gender issues and input from women, the community and local leaders.
- Drafters should ensure that reform of laws and land policies involve women and widows' active participation and input from planning, implementation, monitoring and evaluation. (See: Komjathy, Katalin and Susan E. Nichols, [Women's Access to Land - FIG Guidelines](#), International Federation of Surveyors) Drafters must incorporate gender concerns in all aspects of land planning and reform. Promoting women's economic and social rights, such as health and education, is an integral component to protecting women and widows' rights in land. Also, drafters should take into account the specific context, including the political, social, traditional and customary background of land tenure and institutional capacities; incorporate gender considerations in terms of access to land, security of rights, and use of land; work in consultation with civil society that works with women, widows, the rural poor, and land and agricultural issues. (See: IFAD, [Land Tenure](#))
- Drafters should strive to ensure that tenure policies meet the following goals to facilitate good governance: sustainability, rule of law, subsidiarity, equity, effectiveness, efficiency, transparency and accountability, civic engagement and citizenship, security and promotion of women's human rights. Also, drafters should refer to UN-HABITAT's basic principles on land governance:
 - *Government / national leadership is crucial, as is empowerment and capacity building at various levels in society*
 - *Changing policy or laws is not enough to resolve conflicting interests and to change discriminatory, corrupt and inefficient performance of land institutions*

- *Only sustained, long-term interventions can resolve land problems and deliver secure land rights for all*
- *Gender and minority groups must be handled as specific issues of concern*
- *The interests of multiple stakeholders in land and multiple visions of land development must be reconciled*
- *Outside agencies and development partners must coordinate strategies to engage in and support national processes*

(See: UN-HABITAT, [Secure Land Rights for All](#), 2008)

- The Global Land Tool Network has developed a framework for developing gender-sensitive land tools. It provides methodologies and implementation strategies to promote security of tenure for women in the development of land tools. See: Global Land Tool Network, [Mechanism for Gendering Land Tools: A Framework for Delivery of Women's Security of Tenure](#), 2007.

IFAD provides a question checklist for land tenure assessments:

1.1. Would the current land tenure situation seriously hinder project implementation or undermine incentives for IFAD target groups to participate in project activities?

1.2. What are the likely distributional impacts – intended or unintended – of project activities on target groups and other members of the rural society?

2. The assessment should take into account potential influences of land tenure arrangements on livelihoods at household level (considering impacts on women, men, youth and the elderly), within communities (e.g. for different ethnic groups, sharecroppers and landlords), and between the community and outsiders (e.g. threatening of indigenous people's land rights by mining companies).

3. The land tenure assessment should be based on:

3.1. A participatory poverty analysis that identifies for the intended project area the key elements of the land tenure system, including i.) types of land rights and their core features in terms of security, duration and inclusiveness , ii) main features of the land administration system (de facto and de jure), iii) interrelationships between land tenure and livelihood strategies.

3.2. An analysis of current land policy, including the legal framework and recent policy initiatives. (See: IFAD, [Land Tenure](#))

Promoting security of tenure for women

- The overarching objective for drafters should be to promote equality and security of land and housing tenure for women and widows. The Committee on the Economic, Social and Cultural Rights in its [General Comment No. 4](#) notes that tenure encompasses “rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” More specifically, the [FAO](#) defines tenure as the “set of rights which a person or organization holds in land. Security of tenure is not limited to private ownership but can exist in a variety of forms such as leases on public land or user rights to communal property.” Thus, legislation and policies should promote security of tenure—as the broadest approach to addressing the underlying rights of land and housing access, ownership, use, leases and other rights—for women and widows. Ensuring security of tenure for women and widows will enable them to make decisions on how best to use the land for its resources and long-term sustainable investment, more efficiently use land, and grant them greater access to economic opportunities.
- Security of tenure should include enforceable protections against evictions and arbitrary restrictions of land rights; remedies; a reasonable period of rights appropriate to both the land’s use and the user, and; legal capacity to bequeath, lease, or grant land for the short or long term. (See: UN-HABITAT, [Secure Land Rights for All](#), 2008) Tenure encompasses many different forms, from a freehold that grants the owner the fullest rights to non-formal tenure systems, such as squatting.

Women as direct beneficiaries

Government policies should recognize women as direct beneficiaries of land, without regard to their marital status. Legislation should grant women the right, on an equal basis with men, to be a direct beneficiary whether through state allocations, marriage and the respective marital property regime, inheritance or purchase. Drafters should ensure that laws recognize women’s right to administer property and conclude contracts. [CEDAW](#), Art. 15(2).

Incremental and progressive reforms

Drafters should realize that security of tenure may not require automatic titling and that, in fact, individual titling may not be the best way to protect women. In some situations, individual titles, as opposed to common, public or communal ownerships, may diminish a woman’s current land use rights unless extra protections are implemented. Titling unregistered land could terminate other rights women hold over the property, drive up land prices and lead to expensive claims. See: UN-Habitat, [Policy Makers Guide to Women’s Land, Property and Housing Rights across the World](#), 2007. For example, in Gambia, an irrigation scheme handed control over communal lands to male-headed

households. This measure deprived women of their usufruct right (the right to use property owned by another) to grow their food on this communal property; their agricultural labor was instead diverted to helping the males with their land needs. (See: International Food Policy Research Institute, [Promising Approaches to Address the Needs of Poor Female Farmers](#), 2008) A better approach would be to prioritize land allocation to those who have productively worked on those lands and are often women.

Rather than impose automatic and immediate freehold titling, UN-HABITAT and IFAD recommend that states adopt a flexible approach to fit the context and institutional capacity of the country. An incremental, long-term approach uses existing and traditional land tenure systems as the foundation to build upon and cultivate land tenure reform. Instead of creating a new system at once, the incremental approach is an evolutionary process using different grades of tenure depending on the political, social, traditional and customary factors, institutional resources, and gender considerations. Some possible tenure options include: providing some degree of habitancy rights to unauthorized settlers, individual titling, intermediate tenured options, alternative forms of ownership and tenureship, such as women cooperatives, including women strengthening rights of use, occupancy and development, integrating tenure policy with planning and infrastructure provision, and formalizing customary rights and building on customary tenure systems. Drafters should adopt measures to address, monitor and evaluate these projects' impacts over time with a view toward developing more comprehensive long-term reforms. (See: UN-HABITAT, [Secure Land Rights for All](#), 2008; IFAD, [Land Tenure](#))

CASE STUDY: UN-HABITAT has documented several examples of tenure systems as an alternative option to automatic titling:

- In Kenya, the Nairobi City Council established a Temporary Occupation Licenses system, which distributes public land to a licensee for productive use. The licensee pays an annual renewal license fee and may erect semi-permanent structures on the land. Licensees have used the land for revenue-building activities as well as residential use.
- In the Philippines, the president has issued proclamations to protect squatters from eviction from public lands. This assurance has had the added benefit of motivating residents to make household and area improvements.
- Columbia has passed laws that offer a series of intermediate “stepping stone” options to promote secure and accessible housing, such as “Declarations of Possession,” “buying and selling rights for future use,” and “communal tenancy.” These options promote the tenure rights and offer protections against eviction. Also, Columbia has laws to help promote an adequate standard of living in the absence of a formal tenure system; laws ensure that all nationals can receive basic public utility services as long as they can demonstrate habitation in the homes and ability to pay for the service.

See: UN-HABITAT, [Secure Land Rights for All](#), 2008.

Customary land systems

- Drafters should consider whether to formalize or register customary land rights. Such a determination should be made in consultation with women, widows, civil society and taking into account the current context. Advantages of formalizing a registration system for customary land rights include: an increase in security of tenure on these lands, documentation for landowners for credit purposes, and facilitation of land planning and administration. On the other hand, registration of customary land could terminate the informal use rights of women, exclude her from future rights should her marital situation change, and raise questions over whose name appears. Projects that fail to consider women's customary land rights risks "jeopardizing those rights and alienating women, who often withdraw their labor in response." (See: International Food Policy Research Institute, [Promising Approaches to Address the Needs of Poor Female Farmers](#), 2008; Komjathy, Katalin and Susan E. Nichols, [Women's Access to Land - FIG Guidelines](#), International Federation of Surveyors)
- In some cases, drafters may decide to build upon customary systems in land tenure reforms. Any such reforms must involve the participation of women, widows and community leaders, incorporate gender concerns and identify major tenure patterns in customary law. For example, Ghana is gradually shifting management of customary lands from the government to customary systems. Customary Land Secretariats were established to help address the requests from new residents for housing plots. The secretariat provide a structured land distribution system, and they document land rights, conduct land surveys, drafts leases, administers financial operations and facilitates registration. Compensation is provided to those who are deprived of their farmland as part of the allocation. Part of the income from land funds community infrastructure. (See: UN-HABITAT, [Secure Land Rights for All](#), 2008)
- Drafters choosing to register customary land should exercise caution in granting individual freehold titles to the land, as it can be costly, complicated and have destabilizing effects. Instead, drafters should consider incremental formalization of customary lands by upgrading tenure rights over time while simultaneously evaluating appropriate long-term approaches. (See: UN-HABITAT, [Secure Land Rights for All](#), 2008)

State-owned Land

- Drafters should take into account the needs of women and widows when administering state-owned land. Women and widows must be consulted throughout the development, implementation and evaluation of land allocation policies. Drafters should take into account the context and customary practices when formulating a framework. For example, designating a "household" as the beneficiary unit for land redistribution can exclude women where men are seen as the traditional heads of households or where policies fail to encompass households with female heads or headed jointly. Policies should recognize women, irrespective of marital status, as a specific beneficiary group.

- Drafters should ensure that appropriate credit and loans are made available to women in these cases. For example, in cases where the state retains ownership of the land and grants individuals with usufruct rights, women and widows may face greater challenges than men. Where indigent women have little access to credit, the lack of title to the land they farm means they have no collateral and therefore little recourse to loans. This is particularly true in areas where women require a male relative to access credit and loans.

CASE STUDIES:

Botswana: Policies must take into account and address all needs of target beneficiaries. Botswana offered indigent people Certificates of Rights to provide them with security of tenure and avoid the complexities of registration. Under this scheme, the government owned the urban land and granted certificate holders the right to build a home on it. Granting registrants limited rights also impacted their economic capacities; women registrants were unable to use their home as collateral to access credit nor could they lease rooms to garner income. (See: Komjathy, Katalin and Susan E. Nichols, [Women's Access to Land - FIG Guidelines](#), International Federation of Surveyors)

Zimbabwe: Legislation should ensure that women are equally able to benefit from land allocation programs by taking into account their particular needs and the context. Drafters may need to promulgate quotas, special policies and administrative mechanisms to promote women's equal access. Zimbabwe's fast track land reform involved taking land from white farm owners and redistributed it to other Zimbabweans. The process was plagued with violence, favoritism and corruption. The distributions were based on the head of households, who tend to be men. Where the household was headed by a widow, she could be the recipient of land if she had young children and local leaders concluded she was physically able to handle 12 acres. Notably, the policy did not apply this precondition to male heads of households. If, however, the local leaders determined she was too elderly or her children were of adult age, she was to receive only 2.5 acres. Divorced women were excluded based on an expectation they would leave the land and live with their father or family according to custom. See: Bill Derman, [After Zimbabwe's Fast Track Land Reform: Preliminary Observations on the Near Future of Zimbabwe's Efforts to Resist Globalization](#), 2006. Furthermore, the policy lacked the infrastructure and design necessary to ensure equal access for women. Although the government announced a 20% quota for women beneficiaries of the program, it failed to establish administrative mechanisms to achieve this objective. See: Human Rights Watch, [Zimbabwe: Fast Track Land Reform in Zimbabwe](#), 2002.

Promising Practice: In Ethiopia, where all land is state-owned, the government issued Land Certificates to approximately six million households with the intent of increasing tenure security, advancing women's rights to land and promoting sustainable use of land. Local Land Administration Committees, with at least one female member, helped execute land registration and certification in villages. Certificates were to list the names of the husband and spouse, their pictures and maps. Land committees should have greater female representation, be required to undergo gender-sensitive training, and have a sub-village presence. Overall, however, Ethiopia's land certification process was low-cost, fast, and transparent; women generally believed these joint certificates improved the socio-economic situation. (See: UN-HABITAT, [Secure Land Rights for All](#), 2008; UN-HABITAT, [Land Registration in Ethiopia: Early Impacts on Women](#), 2008; See: International Food Policy Research Institute, [Promising Approaches to Address the Needs of Poor Female Farmers](#), 2008)

Drafters should consider the intersection of gender with other factors, such as ethnicity, that increases vulnerability. In a report about violations against the Oromo in Ethiopia, interviewees described the relocation of ethnic groups into Oromo land, intraethnic fighting, and destruction of the Oromo land base. Reports by interviewees reflected a perception that the government is relocating individuals by ethnic group within Ethiopia to the detriment of the Oromo people. The relocation of Oromos disrupts their traditional land base, creates real and perceived resource scarcity, and exacerbates environmental problems like drought. Interviewees reported that the Ethiopian government has taken land away from Oromo farmers, particularly around urban areas, thus displacing farmers, often leaving them on the streets. Drafters should take into account ethnic and other factors that may further impact women and widows' access to security of tenure. (See: [Human Rights in Ethiopia: Through the Eyes of the Oromo](#), The Advocates for Human Rights, 2009)

Joint tenure and titling for spouses

This section does not intend to address all forms of shared tenure, such as family tenure, communal tenure, community titling, and land market transactions, but rather focuses on joint titling and tenure when the state carries out land distribution programs allocating titles, uses, leases or other rights to land and housing, and for women in marriage or non-formal, conjugal unions.

Compulsory joint tenure

Legislation should provide for compulsory joint tenure as the default regime when conducting land or housing allocation to households or when spouses marry. In this case, both spouses will hold land and/or housing either through a joint title or by holding equal rights over the property. Non-formal unions should also be subject to compulsory joint tenure or co-ownership. (See: UN-Habitat, [Policy Makers Guide to Women's Land, Property and Housing Rights across the World](#), 2007; UN-HABITAT, Shared Tenure Options for Women, 2005) Drafters should repeal optional joint tenure as the default regime in these cases.

Compulsory joint titling

Where states allocate lands or housing using a titling scheme or reform marital property systems, legislation should provide for compulsory joint titling of marital property, particularly in societies that bequeath land through the patrilineal side. Non-formal unions should also be subject to compulsory joint titling or to co-ownership/co-tenure where documentation or fee requirements hinder such registration. (See: [Shared Tenure Options for Women](#))

Promising Practices:

The Philippines uses co-ownership and joint ownership laws to address property acquired in non-formal unions. The laws require both parties' consent for transactions concerning the property. (See: UN-Habitat, [Policy Makers Guide to Women's Land, Property and Housing Rights across the World](#), 2007)

Nicaragua requires joint titling of land. Also, if the title is registered only under the household head, it still recognizes joint title. (See: Knox, Anna, et al., [Connecting Rights to Reality: A Progressive Framework of Core Protections for Women's Property Rights](#), International Center for Research on Women)

Ensuring effective implementation

Drafters should pay careful attention to terminology in land laws and how the general public may interpret them. For example, language in land and housing laws should avoid reference to the "head of household" but rather reference "women and men," or "both spouses." (UN-HABITAT, [Shared Tenure Options for Women](#), 2005)

Legislation should provide for procedural guidelines to facilitate effective implementation, such as developing a model title certificate with space for both spouses' signatures.

CASE STUDY: Drafters must ensure effective implementation of land laws through all stages. Vietnam's 2003 legal reforms requires Land Use Right Certificates list both the husband and wife's names, but the actual certificate provided insufficient space to list both names. Consequently, only 3 percent of land certificates bear both names. (See: UN-Habitat, [Policy Makers Guide to Women's Land, Property and Housing Rights across the World](#), 2007) Effective consultation in the planning process and monitoring of implementation will help facilitate gender equality in land and tenure reform.

Ensuring female participation and representation

Legislation should provide for continuous participation from women and widows in the planning, implementation and evaluation of land and legal reforms.

Promising Practice: The Justice for Widows and Orphans Project in Zambia uses informal tribunals for advocacy, public awareness and accountability. Ten community stakeholders and experts hear cases on various topics from individual claimants, render a decision and a recommendation. It provides widows and orphans with a venue for challenging discriminatory traditions and practices. (See: Christine Varga, [The Case of the Justice for Widows and Orphans Project in Zambia](#), ICRW, 2006; [Profile of Partners](#), Democratisation, State and Civil Society – Good Governance Programme: Zambia, GTZ)

Laws should require local and national land administration bodies have proportionate female representation. Legislation should provide for the development of guidelines and regulations for these bodies and ensure they address equality for women and widows.

Promising Practice: The [Tanzania Village Land Act](#) provides for female representation on the village adjudication committee (at least four of the nine members) and village land councils (at least three of the seven members). The village adjudication committee or office is to treat women's rights "to occupy or use or have interest.. in land not less favourably than the rights of men or agriculturalists to occupy or use or have interests in land." Article 57(2). Regarding an application for customary right of occupancy, the village council is to respect equality and "treat an application from a woman, or a group of women no less favorably than an equivalent application from a man, a group of men or a mixed group of men and women; and (ii) adopt or apply no adverse discriminatory practices or attitudes towards any woman who has applied for a customary right of occupancy (Article 23(4)(1)).

Public awareness

Reforms should also be conducted with legal literacy training for the public, particularly for women, widows and traditional leaders. Legislation should provide and support gender-sensitive education for land authorities, officials, community leaders, women and widows. Public awareness activities should educate women and men about women's rights to co-own and manage land on an equal basis as men and the necessary legal procedures. Such educational initiatives should be carried out in consultation with women's advocates and organizations.

Decentralization and accessibility

Legislation should ensure that land reform and registration mechanisms are accessible. Such mechanisms should be gender-sensitive, as well as economically, geographically, and linguistically accessible to women and widows. Laws should simplify and decentralize registration and other land administration procedures and ensure that procedures and public information activities are available on a local level.

Drafters should evaluate policies for their financial impact on vulnerable populations. Drafters should assess fees for land procedures, such as registration taxes, for their impact on prevent disadvantaged populations from access. Drafters should develop waiver policies for indigent and vulnerable populations, such as widows, for these fees.

CASE STUDY: Uganda's 1998 Land Act created District Land Boards to administer land as well as 4,500 local land committees to support the Boards. The act sought to develop a land tenure system through decentralized administration. Uganda's 1998 Land Act states that customary laws are null and void if they prevent women and children from inheriting land. Land committees are specifically charged with protecting "the interests of women, children and persons with disabilities." To ensure this duty is carried out, women are allotted at least 25% of the positions on the land committees and tribunals. Furthermore, in order to transfer land on which a family lives or farms its own food, both the husband and wife must provide written consent. See: Aili Mari Tripp, [Women's Movements, Customary Law and Land Rights in Africa: the Case of Uganda](#), 7 Afr. Studies Quarterly 2 (Spring 2004).

Monitoring

Legislation should for ongoing monitoring to review land and law reform and its impact on women and widows. Laws should provide for a monitoring body on the local and national levels to evaluate implementation and effects on women's land rights. Legislation should provide for the collection of data that is disaggregated by indicators, such as sex, marital status and household status. (See: [Monitoring of Laws on Violence against Women](#))

Domestic violence civil remedies

Civil orders for protection

- Drafters should create a protection remedy for widows who are victims of domestic violence in their civil legislation. Widows' vulnerability to domestic violence may be heightened because of their socio-economic situation and harmful traditional practices. Patriarchal perceptions that view women as subordinate to men are one of the underlying causes of violence against women. Furthermore, traditional notions of family privacy often interfere with effective police intervention and prosecutorial decisions in domestic violence cases. In the case of widows, such discriminatory mentalities augment the discrimination women may already face with regard to inheritance, land and housing. The economic hardship they face when denied inheritance rights or security of tenure creates additional stress and affects her ability to leave a violent relationship. (See: [Other Causes and Complicating Factors](#), StopVAW, The Advocates for Human Rights)

- Civil orders for protection orders can take the form of emergency or ex parte orders (temporary orders issued without notice to the defendant), which last a short time, or complainant/survivors may seek longer-term orders for protection. These longer orders can require a full hearing before a judge with the respondent present. The [Domestic Abuse Act of Minnesota, USA \(1979\)](#), ([Minn. Stat. §518B.01 Subd.4](#)) was among the first laws on orders for protection in the world, enacted more than thirty years ago. The order for protection remedy has proven to be one of the most effective legal remedies in domestic violence cases. (See: [Orders for Protection](#), StopVAW, The Advocates for Human Rights)
- Legislation should authorize a judge to order relief that will protect the widow from violence and meet her needs. For example, the [UN Model Framework](#) includes these specific provisions for orders for protection:
 - (a) Restrain the offender/defendant from causing further violence to the victim/plaintiff, her dependents, other relatives and persons who give her assistance from domestic abuse;
 - (b) Instruct the defendant to vacate the family home, without in any way ruling on the ownership of such property;
 - (c) Instruct the defendant to continue to pay the rent or mortgage and to pay maintenance to the plaintiff and their common dependents;
 - (d) Instruct the defendant to hand over the use of an automobile and/or other essential personal effects to the plaintiff;
 - (e) Regulate the defendant's access to dependent children;
 - (f) Restrain the defendant from contacting the plaintiff at work or other places frequented by the plaintiff;
 - (g) Upon finding that the defendant's use or possession of a weapon may pose a serious threat of harm to the plaintiff, prohibit the defendant from purchasing, using or possessing a firearm or any such weapon specified by the court;
 - (h) Instruct the defendant to pay the plaintiff's medical bills, counselling fees or shelter fees;
 - (i) Prohibit the unilateral disposition of joint assets;
 - (j) Inform the plaintiff and the defendant that, if the defendant violates the restraining order, he may be arrested with or without a warrant and criminal charges brought against him;
 - (k) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the defendant;
 - (l) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can activate the civil process and sue for divorce, separation, damages or compensation;
 - (m) Conduct hearings in camera to protect the privacy of the parties.

- Remedies should take into account the dynamics of widow maltreatment and allow judges to order the immediate return of children to their mother, and prevent the misappropriating, squandering, or depleting land and property owned by the parties or property from the marriage used or managed by the widow.

Promising Practice: India’s domestic violence law authorizes the magistrate to issue a protection order that also prohibits the perpetrator from “alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate” (Article 18(e)). (See: [Domestic Violence](#))

Civil claim for compensation

Legislation should provide widows the right to a civil claim for compensation for harms suffered, such as violence or property grabbing. Such a claim should give the victim the option of suing for an injunction, restitution of the property or cash compensation. Legislation should include provisions which provide for restitution or compensation to the complainant/survivor either through the criminal proceedings or through a separate tort law. (See: [UN Handbook](#) 3.11.5) Legislation should abolish requirements that forbid women to bring lawsuits against her in-laws, or that require the consent of a family member to bring a lawsuit. (See: [UN Handbook](#) 3.12.1) Laws should provide for legal aid to assist widows in bringing such claims.

For example, the law of [Malaysia](#) addresses compensation in the context of domestic violence. It states that a victim of domestic violence is entitled to compensation in the court’s discretion:

Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.

(2) The court hearing a claim for such compensation may take into account—

- (a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered;*
- (b) the cost of medical treatment for such injuries;*
- (c) any loss of earnings arising therefrom;*
- (d) the amount or value of the property taken or destroyed or damaged;*
- (e) necessary and reasonable expenses incurred by or on behalf of the victim when the victim is compelled to separate or be separated from the defendant due to the domestic violence, such as—*
 - (i) lodging expenses to be contributed to a safe place or shelter;*
 - (ii) transport and moving expenses;*
 - (iii) the expenses required in setting up a separate household which, subject to subsection (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence, or alternative residence, as the case may be, for such period as the court considers just and reasonably necessary. (Part III,10)*

Criminal laws

- Legislation should ensure all forms of widow maltreatment are criminalized and are non-compoundable. Legislation should ensure that widows have access to justice, equal protection of the law and prompt redress for the harm that they have suffered. (See: Roles and Responsibilities)
- Drafters should ensure that criminal laws prohibiting the maltreatment of widows supersede customary laws and practices that condone or authorize these violations. Legislation should state that the payment of bride price is not a defense to any forms of maltreatment of widows.
- Legislation should appropriately penalize and punish acts of violence against women carried out as intimidation or retribution. Such violence and harassment may include violence, threats including threats of bewitchment, acid attacks, stove burnings, forced evictions, demands for the return of bride price, interference with family relations, crimes against property, and “honour” crimes. Criminal legislation should also provide for criminal no contact orders, which are similar to civil orders for protection, and may be a part of the criminal process when a violent offender is accused of a crime. For example, (see: [Domestic Abuse Act of Minnesota, \(1979\)](#), [Minnesota, §518B.01 Subd.22](#))

Sexual assault

Legislation should criminalize all forms of sexual assault, including those forms uniquely associated with widows, e.g. widow cleansing. Drafters should ensure penalties for sexual assault reflect the gravity of the offense, eliminate statutes of limitations that restrict prosecution after a period of time has elapsed, and focus on protecting the victim during the legal process by, for example, restricting the ability of the perpetrator to inquire into the victim’s past sexual history. See, for example, the United Nations expert group report entitled "[Good practices in legislation on violence against women](#)" from May 2008; [Sexual Assault: Criminal Law and Procedure](#), StopVAW, The Advocates for Human Rights.

(See: [Sexual Assault](#))

Criminalization of “widow cleansing”

Legislation should criminalize “widow cleansing,” or the act of forcing a widow to have sex with another man to “cleanse” her after her husband’s death. Laws should punish those who commit the sexual assault, as well as other third parties, such as relatives or community leaders, who are involved in or authorize “widow cleansing.” Drafters should take all appropriate measures to ensure that customary practices and laws do not authorize or condone “widow cleansing.”

Criminalization of marital rape

Legislation should clarify that the existence of an intimate partner relationship between the parties is not a defense to sexual assault. For example, widows may be inherited by their in-laws or forced into a levirate marriage, thus subjecting them to rape by their new husbands. Laws should make clear that a marriage or other informal union will not

preclude criminal liability for rape. Drafters should criminalize marital rape by stating that the relationship between the perpetrator and the victim does not bar application of sexual assault provisions. Drafters should remove any provisions in the law that states that marriage or another relationship constitutes a defense to sexual assault. Legislation should include a provision that states that “no marriage or other relationship shall constitute a defense to a charge of sexual assault under the legislation.” See [UN Handbook](#), 3.4.3.1, law of Nepal. Provisions should apply “irrespective of the nature of the relationship between the perpetrator and the survivor.” ([Marital and Intimate Partner Sexual Assault](#), Stop VAW, The Advocates for Human Rights)

Many countries retain some form of marital immunity for sexual assault, for example, less severe penalties for married offenders, or special procedural hurdles for married survivors. (See: [Goldfarb](#) Expert Paper p. 11 and [Spousal Rape Laws Continue to Evolve](#), Women’s E-news)

Promising practices:

Namibia Combating of Rape Act (2000) states that marriage or other relationship does not constitute a defense to rape. South Africa [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act \(No. 32\)](#) Chapter 2, Sexual Offences, Art. 56(1)).

Nepal: The Gender Equality Bill 2063 (passed September 2007) makes marital rape a criminal offence and a valid ground for seeking divorce.

Aggravating factors

- Legislation should include a description of aggravating circumstances. These circumstances should result in increased penalties upon conviction. (See: [UN Handbook](#), 3.11.1) Multiple acts of sexual assault, the relationship between perpetrator and survivor, use or threat of use of violence, multiple perpetrators or accomplices, marital rape as a consequence of levirate or sororate marriage, and sexual assault to “cleanse” a widow should be aggravating factors.

(See: [UN Handbook](#) 3.4.3.1 for aggravating circumstances; [Gender-Based Violence Laws in Sub-Saharan Africa](#), p. 26.)

- Legislation should provide that the sexual assault of individuals in vulnerable populations, such as widows, women in situations of armed conflict, and children, should constitute an aggravating factor in the sentencing phase of the prosecution. Legislation should provide that law enforcement must investigate and prosecute the case as with any other sexual assault. (See: [Sexual Assault](#))

Domestic violence

Legislation should state the penalties for all acts of domestic violence, including those involving low-level injuries. Widows may be vulnerable to domestic violence by in-laws and other relatives for various reasons, such as economic hardship due to discriminatory inheritance laws, lack of housing or shelter, patriarchal notions that discriminate against women, and a lack of legal protections. For example, in-laws may resort to violence and other harassment as a tactic to evict the widow from the marital home or intimidate her from asserting her rights. Legislation should prohibit payment of bride price or other customary traditions that grant deceased spouse's relatives ownership over the deceased's home or property as defenses to charges of domestic violence. Criminal penalties should be increased for repeated domestic violence offenses, even if they involve low-level injury. (See: [Family Violence: A Model State Code](#), Sec. 203) Legislation should specify that penalties for crimes involving domestic violence should be more severe than similar non-domestic violence-related crimes. Legislation should include guidelines for appropriate sentences for domestic violence-related offenses. Legislation should provide that sentencing guidelines reflect the gravity of the offense. Legislation should provide that sentencing be enhanced for repeat offenses, including repeated violations of orders for protection. (See: [Domestic Violence](#))

Trafficking

Drafters should criminalize the offence of sex trafficking. Widows may be vulnerable to trafficking because of a number of factors, such as financial hardship and lack of housing, shelter or viable economic opportunities. Also, women who are victims of violence are susceptible to being trafficked as they leave an abusive home to find work. (See: [Factors That Contribute to Trafficking in Women](#), StopVAW, The Advocates for Human Rights) Drafters should criminalize attempts to commit sex trafficking, aiding and abetting sex trafficking, the unlawful use of documents in furtherance of sex trafficking, and unlawful disclosure of the identity of victims or witnesses; and create accomplice liability for sex trafficking. Drafters should ensure that the penalties for sex trafficking address aggravating circumstances and punishment for public officials involvement and complicity in sex trafficking and related exploitation. (See: [UN Trafficking Protocol](#), Arts. 3 and 5)

Criminal provisions addressing the following should be included in legislation to combat sex trafficking:

- Criminal sex trafficking offences by traffickers and buyers
- Attempted sex trafficking offences (those who attempt sex trafficking should be held accountable in line with the offence of "attempt" of other serious crimes)
- Aiding and abetting (those who assist and participate in the sex trafficking of others should be held accountable in line with the offence of "aiding and abetting" other serious offences)

- Accomplice liability for sex trafficking
- Organizing and directing others to commit sex trafficking offences
- Unlawful use of documents in furtherance of sex trafficking
- Unlawful disclosure of the identity of victims or witnesses
- Aggravating circumstances for sex trafficking offences
- Punishment for public officials involvement and complicity in trafficking and related exploitation

(See: [UN Trafficking Protocol](#), Art.5; [UNODC Model Law Against Trafficking in Persons](#), Chapters V and VII, 2009; See: [UN Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), Guideline 4(10); [UNHCR Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked](#), Section II(d)(21-24), 9-10, 2008.)

Drafters should ensure that criminalization of sex trafficking and sex trafficking-related offences do not inadvertently penalize trafficking victims for crimes committed as a result of being trafficked. Drafters should affirmatively protect trafficking victims from being arrested, charged, detained and convicted of such crimes. Without such protections, the human rights of trafficking victims cannot be protected. Furthermore, trafficking victims will be reluctant if not unwilling to participate in the prosecution of their traffickers without such protections because they fear retaliation, harm and death. Without prosecutions and convictions of sex traffickers, there will be no deterrents for this crime and no message to the community about its heinous and criminal nature.

(See: [Sex Trafficking of Women and Girls](#))

Forced marriage

Legislation should criminalize forced marriage and all the forms it may assume, including child marriage, levirate marriage, sororate marriage and widow inheritance. Criminal laws should specifically prohibit any institution or practice where a widow may be inherited by another person or where a sister is forced to marry her brother-in-law or other relative. Legislation should define forced marriage broadly, including free and full consent provisions. Legislation should punish those who perpetrate, aid or authorize these types of forced marriages. (See: [Forced and Child Marriage](#))

Promising Practice: [Norway's Penal Code](#) (2003) punishes forced marriage as a felony against personal liberty. Sec. 222(2) states that “Any person who by force, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct forces anyone to enter into a marriage shall be guilty of causing a forced marriage. The penalty for causing a forced marriage is imprisonment for a term not exceeding six years. Any person who aids and abets such an offence shall be liable to the same penalty.”

- Criminal laws should grade the crime of forced marriage based on harm to the victim and aggravating factors. Aggravating factors may include offenses that accompany or are used to effect the forced marriage, such as kidnapping, child abduction, false imprisonment, assault, battery, threats of violence or death, breach of the peace or conduct that disrupts the public order, harassment, child abuse, rape, sexual crimes, blackmail, and violations of protection orders. Drafters should ensure these offenses also constitute offenses under the criminal code.
- Drafters should ensure that such criminal laws supersede customary laws that allow for widows to be inherited by her husband's brother or other male relative.

Child abduction and kidnapping

- Legislation should criminalize the wrongful removal of a child from his biological mother/widow upon her husband's death. Legislation should criminalize the harmful practice where a deceased's relatives remove a widow's children from her care. Provisions on child abduction, kidnapping, interference with family relations, or other conduct concerning a child, should explicitly prohibit this practice. Drafters should ensure that such criminal laws supersede customary laws and practices that presume the charge and custody of the children is with the patrilineal relatives, not the biological mother.
- Criminal legislation should reference civil laws stating that removal of the child from the parent is wrongful unless a determination is made in accordance with law and procedures by a competent authority that the child's best interests dictate so, subject to judicial review by a recognized court of law. Drafters should ensure legislation compels the immediate return of a child wrongfully removed from the mother. Legislation should allow a judge to issue a criminal no contact order against the abductors where a judicial determination has found it to be in the best interests of the child.

Femicides and "honour" killings

- Drafters should recognize that murder is another form of widow maltreatment and should criminalize it accordingly. For example, legislation should prohibit and punish witch hunting, an offense often directed at widows. Witch hunting involves the accusation of individuals, often elderly women, of practicing witch craft when others fall ill or die. Witchcraft, however, may often be a pretense for the perpetrators' personal gain. Such perpetrators use vigilante violence to torture and kill so-called "witches," thus removing these women from the line of inheritance, or from the home or land. Legislation should impose penalties for these murders that are commensurate with other first-degree murders.
- Legislation should list aggravating factors that increase the sentence, such as committing murder for financial gain, committing murder as witch hunting, vulnerability of the victim due to old age or widow status, the murder was carried

out in a particularly heinous way that inflicted torture or serious physical abuse to the victim, the murder was committed after substantial planning or premeditation, and a prior criminal history of the perpetrator.

- Drafters should create a separate criminal offense of “honour” crimes and “honour” killings. Drafters should ensure that crimes of “honour” are non-compoundable offenses: they should be prosecuted regardless of whether the victim or her family have withdrawn the complaint or whether the parties have reached a private settlement. Penalties for “honour” crimes and killings should be reflective of the seriousness of the crime and commensurate with other similar offenses. (See: sub-section on [Sentencing Provisions](#) in Section on “Honour” Crimes)

Offenses involving property

Property Grabbing

- The Canadian HIV/AIDS Legal Network defines property grabbing as “practice whereby the property of a deceased person is taken from the surviving family members and heirs to whom it rightly belongs.” It provides the following criminal definition:

Article 48. Property dispossession

(1) No person shall, before the distribution of the deceased’s estate, eject a surviving spouse or child from the matrimonial home.

(2) Any person who, before the distribution of the deceased’s estate:

(a) ejects a surviving spouse or child from the matrimonial home;

(b) deprives an entitled person of the use of:

(i) any part of the property of the entitled person; or

(ii) any portion of the remainder which the entitled person stands to inherit under this law;

(c) removes, destroys or otherwise unlawfully interferes with the property of the deceased person; or

(d) removes any children from the care and control of the surviving parent, unless mandated by [relevant child protection services]; commits an illegal act and is punishable by a fine not exceeding [monetary amount] and/or a term of imprisonment not exceeding [number] years.

(3) Any person ejected from her or his matrimonial home, or who has her or his property removed, destroyed or otherwise unlawfully interfered with, may file a civil cause of action against the perpetrators of said conduct for the return of the property, for its value if it has been destroyed, and for damages.

(See: Canadian HIV/AIDS Legal Network, [Respect, Protect and Fulfill: Legislation for Women’s Rights in the Context of HIV/AIDS](#), Vol. Two: Family and Property Issues, 2009)

- Drafters should consider whether to create a specific offense of property grabbing or address it through other related criminal laws. For example, other related criminal laws may address components of property grabbing, including theft, conversion, embezzlement, criminal breach of trust, unauthorized use of property and criminal trespass. These criminal laws should prohibit the taking of the home, land, livestock, and other moveable property. Laws should increase the penalties when such theft is carried out using violence, threats including threats of bewitchment, intimidation, dangerous weapons or sexual assault. See: Section on Definition of Property Grabbing and Adverse Possession.
- Drafters should review laws and ensure correlation between criminal and civil legislation regarding marital property. Civil legislation should provide for a full community of property regime, which considers all property and money brought into and obtained during the marriage joint property. Community of property regimes should be set up to account for women’s non-documented contributions to the property, including domestic labor, agricultural work, and childrearing.

CASE STUDY: Where an executor of a will or administrator of an estate abuses his position to engage in property grabbing of the deceased’s estate, legislation should criminalize such abuse of authority. India’s Penal Code contains a provision, entitled Criminal Breach of Trust:

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust.”

Forced eviction

- Legislation should criminalize forced evictions and punish perpetrators who forcibly evict widows. Criminal laws should also punish other offenses used to effect the forced eviction, such as violence, threats including threats of bewitchment, intimidation, use of dangerous weapons and sexual assault.
- Drafters should review laws and ensure correlation between criminal and civil legislation regarding forced eviction. Drafters should ensure that civil legislation guarantees a widow’s right to remain in the marital home with her children after her husband’s death. Civil legislation should promote due process and explore all feasible alternatives in consultation with affected persons in those limited circumstances that do allow eviction.

Extortion laws

- Legislation should also criminalize property grabbing that is carried out with the infliction of injury, grievous injury, death or attempts thereof, or with the threat of injury, grievous injury, bewitchment or death. Drafters should model the provision of property grabbing on extortion or explicitly incorporate the offense into existing extortion laws.
- Extortion laws should include provisions that focus both on intentional infliction of fear of injury (emotional distress), as well as actual infliction of injury (physical assault). For example, the [Pakistani Penal Code's](#) chapter on extortion focuses on the intentional infliction of fear of injury to oneself or a third person:

383. Extortion:

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

384. Punishment for extortion:

Whoever, commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Putting person in fear of injury in order to commit extortion:

Whoever, in order to the committing of extortion, puts any, person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Extortion by putting a person in fear of death or grievous hurt:

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person to any other, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion:

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any Other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

- India's Penal Code defines extortion, as intentionally placing one in fear of injury to herself or another: "Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion" (Article 383). India's Penal Code similarly punishes extortion through infliction of fear of injury to oneself or a third person as offences against property

(Articles 383-86). India's Penal Code also punishes infliction of injury for purposes of extortion as offences against the human body. Article 327 states:

“Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Article 329 states:

“Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with 152[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Victims’ rights and responding to victims’ needs

Victims’ rights

- Legislation should include a statement of the rights of complainant/survivors. It must promote complainant/survivor safety, agency, and assistance, and prevent the re-victimization of the complainant/survivor. It should remove barriers that may prevent them from seeking safety, such as concerns about child custody, access to shelters, and legal aid.

(See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009; and [Combating violence against women: minimum standards for support services](#) (2008))
- For example, the [Model Charter for the Rights of Widows](#) outlines several rights for widows, including:
 - the right to inherit from their husbands’ estate, whether intestate or testate;
 - the right to remarry and marry someone of her own choice;
 - the right of daughters to inherit on an equal basis with sons;
 - the right to free legal aid in inheritance, property and personal status claims;
 - the right to same employment opportunities as other women and men;
 - the right to protection of themselves and their children from sexual exploitation, prostitution and trafficking;
 - appropriate financial aid as needed to send their children to school.
- Also, [Spain](#)’s law contains a guarantee of victim’s rights. Article 17

- The statement of rights should inform the complainant/survivor of legal remedies (such as the order for protection and ex parte order for protection) and the support services offered by the state.
- Legislation should ensure that widows have access to comprehensive information about their rights and enforcement mechanisms. Laws should ensure women have the opportunity to fully participate in these enforcement mechanisms, as well as in planning, administration and implementation of land, inheritance, and property systems and other legal reforms and projects. See: Section on Public Awareness. Legislation should provide for services for survivors/complainants. Because widows are vulnerable to various forms of maltreatment, including property and inheritance issues, family law issues, and violence, legislation should provide for a coordinated community response. See: Section on Coordinated Community Response. Legislation should state that survivor services are not conditional upon filing a report with the police, or upon the survivor's decision to testify or to work with prosecution regarding the case. See: [Gender-Based Violence Laws in Sub-Saharan Africa](#), p. 44.

Promising Practice: Drafters should consider supporting service initiatives that provide survivor/complainants multiple resources in one site location. A centralized location should provide widows with access to law enforcement, child protection personnel, sexual assault and other trauma counselors, as well as paralegals or other advocates to provide assistance regarding inheritance, property, and family rights. For example, the Fourth Judicial District Court of Hennepin County in Minnesota, United States, established a [Domestic Abuse Service Center](#) to serve as a centralized location for “people who are victims of violence caused by a family or household member,” including actual or threatened violence. The Service Center is staffed by District Court personnel who can assist a victim complete the paperwork necessary for temporary legal protection from an abuser. The Service Center also houses other city, county and advocacy organization staff, who are available to help victims of domestic violence with other legal and related needs. Hennepin County's Service Center was the first such center of its kind in the United States when it was started in 1994; it has since been replicated in several other locations. Such centers reduce bureaucratic and other barriers to women seeking protection from abusers, including addressing the difficulty and confusion associated with traveling to several different offices for needed services.

Basic victim services

- Legislation should provide funding for and support the establishing of comprehensive and integrated support services to assist survivors of widow maltreatment. It should state that all services for women survivors of violence are to provide adequate support to their children. Also, the location of such services should be such that gives both urban and rural populations equitable access to the services. (See: [UN Handbook](#), Section 3.6.1) Such services should be

economically, geographically and linguistically accessible, as well as gender-sensitive.

- Legislation should require a free, 24-hour hotline that is accessible from anywhere in the country and staffed by persons trained in maltreatment of widows issues. (See: [Crisis Centers and Hotlines](#), Stop VAW, The Advocates for Human Rights) The hotline should be multilingual to accommodate local dialects. States may want to consider establishing online counseling services and information, but should ensure they provide information on and mechanisms to preserve the privacy of the information seeker's website searches. (See: [Electronic Privacy Information Center](#)) for suggestions on protecting online privacy. Counselors should be trained on the dynamics of widow maltreatment, property rights, inheritance rights, sexual assault, domestic violence, HIV/AIDS prevention, and deprivation of children. Hotline staff should maintain a list of referrals to other service providers that specialize in these issues and can provide further assistance to survivor/complainants.
- Legislation should provide for one shelter or refuge for every 10,000 inhabitants, providing safe emergency accommodation, qualified counseling and assistance in finding long-term accommodation. Widows facing eviction, widow inheritance, widow cleansing and other human rights violations should be able to access these shelters. Legislation should provide for specialized and appropriate services for widows within these shelters or establish specialized shelters for them. Shelter accommodation should take into account the particular needs of widows: they may be living with HIV/AIDS, lost their marital home, land and property, been wrongfully deprived of their children, or have suffered sexual assault. Legislation should provide support for these shelters and ensure shelters or another provider offer counseling and assistance in securing long-term accommodation. (See: [Shelters and Safehouses](#), StopVAW, The Advocates for Human Rights)
- Legislation should provide for efficient and timely provision of financial assistance to survivors/complainants to meet their needs. Discriminatory property and inheritance systems mean that widows may be denied the resources they have used to care for themselves and their children throughout their marriage. Long-term assistance may include skills and vocational training and access to financial credit to aid widows in earning a livelihood. These programs should be structured in a way to meet the particular needs of survivors of different forms of violence.
- Legislation should guarantee women's right to assert a legal claim independent of a male and ensure her testimony and evidence bears equal weight with that of a man's. Legislation should provide the survivor/complainant's right to free legal aid in all legal proceedings, including inheritance and property claims and claims for compensation or restitution, as well as free court support, such as accompaniment and/or representation by an appropriate service or intermediary, and where necessary, free access to qualified and objective interpretation. Laws should also protect the survivor/ complainant's right to decide whether to appear in court or submit evidence via alternative means, enable victims who testify in

court to give evidence in a way that does not require them to confront the defendant, provide protection to the victim within the court infrastructure, require the victim to testify only as many times as is necessary, request closed courtroom proceedings where constitutionally permissible, and impose a gag on all publicity regarding individuals involved in the case with appropriate remedies for non-compliance.

Promising Practice: The Justice for Widows and Orphans Project in Zambia has created support groups for widows and orphans, which includes training them as paralegals.

- Legislation should mandate access to free-of charge health care for immediate injuries and long-term care including sexual and reproductive health care, emergency contraception and HIV prophylaxis in cases of rape. Widows may suffer from immediate and long-term injuries. Critical to any health care response is confidentiality. Health care providers, like advocates, must ensure that women know that the information they share, such as a positive HIV status, will be kept safe. Drafters should adopt legislation, regulations and other measures to protect the privacy and confidentiality of people living with HIV. ([Declaration of Commitment on HIV/AIDS](#), UNGASS 2001) Legislation should state that require health care providers to respect the privacy and personal information of its patients and ensure that such information is not used or disclosed for purposes other than for which it was collected or consented to. UNESCO Universal Declaration on Bioethics and Human Rights, Article 9. Personnel who are authorized to access HIV-related information should undergo appropriate training and be held responsible for protecting confidentiality. UNAIDS has created interim [Guidelines on Protecting the Confidentiality and Security of HIV Information](#) that outline proposed principles on personal information of patients living with HIV/AIDS. See: UNAIDS, [Interim Guidelines on Protecting the Confidentiality and Security of HIV Information: Proceedings from a Workshop](#), 15-17 May 2006, Geneva Switzerland, Section 5.1; [Confidentiality and Support](#), StopVAW, The Advocates for Human Rights.
- The [Noor Al Hussein Foundation's Institute of Family Health](#) (IFH) has developed a "Training Manual for Private Health Care Providers in Management of Victims of Violence against Women." The manual provides information on detection, diagnosis, and referral of victims to support services. According to the IFH, the guide is the first of its kind in the region to be available in Arabic and is already being used by medical professionals at nine private hospitals in Jordan. See: [Creating a Health Care Response](#), StopVAW, The Advocates for Human Rights.

Right to compensation

- Drafters should take steps to address the issue of compensation. Legislation should provide survivors of widow maltreatment with a civil tort remedy for claims of assault; battery; intentional or reckless infliction of emotional distress; forced eviction; intentional interference with child custody, visitation or parent-child

relationship; conversion; trespass; and fraud. For example, see: Brian K. Zoeller and Patrick Schmiedt, [Suing the Abuser: Tort Remedies for Domestic Violence](#), *Victim Advocate*, Spring 2004.

- Criminal laws should allow sentences to include an order of compensation and restitution from the perpetrator to the victim. Laws should state that while compensation is a punitive element in violence against women cases, it does not substitute for other punishments, such as imprisonment. (See: [UN Handbook](#), p. 52) In cases where the offender cannot pay the victim compensation, laws should provide for state-sponsored or other compensation for victims who have sustained significant bodily injury or impairment of physical or mental health as a result of the maltreatment. See: [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), ¶¶ 12-13; See: [UN Handbook](#).

Promising Practice: Under France's Framework Justice Act (2002), police are obligated to inform victims of their right to apply for compensation and seek a civil remedy. Also, police can register compensation claims on behalf of victims, thus eliminating the requirement for victims to go to court. (See: [Non-criminal Remedies for Crime Victims](#), Council of Europe, 2009) France has instituted a [state fund for compensation for victims of violent crimes](#), whereby victims may apply to the State Fund for Victims of Crime (pp. 14-15). Criminal justice bodies aid the fund by recouping funds from perpetrators. See Reform Act 1990.

Right to adequate housing

- Legislation should provide for and support the development of long-term, subsidized housing for survivors/complainants. Such housing should be located in a safe community without fear of victimization or retaliation.
- Legislation should recognize the right to adequate housing and incorporate these standards into domestic laws. The Center on Housing Rights and Evictions has outlined several elements necessary to realize the right to adequate housing:
 - Security of Tenure: protection against arbitrary forced eviction, harassment and threats that exists independent of any relationship to a male.
 - Availability of Services, Materials, Facilities and Infrastructure: access to potable water, energy for cooking, heating and lighting, sanitation, washing facilities, food storage, refuse disposal, drainage and emergency services. Proximity to these amenities is especially important for women who bear multiple household and childrearing tasks.
 - Affordability: The value paid for a household's housing must not be excessive to where it jeopardizes or compromises the resident's ability to meet and satisfy other basic needs. Legislation should take into account the economic needs of women and widows, who may require credit and financing assistance to afford housing.
 - Habitability: Adequate space and protection against the elements, other health threats, structural dangers, as well as domestic violence.

- Accessibility: Guarantee of priority considerations in housing for vulnerable populations, including the elderly, children, people with disabilities, and people living with HIV/AIDS. In countries where widow maltreatment is problematic or women are traditionally subordinated, legislation should include widows and women, particularly those living with disabilities or HIV/AIDS as a disadvantaged group.
- Location: Access to basic sectors, such as employment, health care, schools, childcare and other social services. Legislation should ensure location enables women opportunities to achieve gender equality.
- Cultural adequacy: Cultural identity and diversity. Legislation should ensure that women have the opportunity to participate in the planning of housing.

See: COHRE, [Women and Housing Rights](#), 2nd ed., 2008.

HIV/AIDS

- Legislation should provide access to health care, particularly reproductive health care and HIV prophylaxis. Widows may be survivors of sexual violence and therefore need medical care to address HIV/AIDS, STDs, and other reproductive health complications. Because women in forced marriages, such as levirate or sororate marriages, may have less power to negotiate safe sex practices, their risk of contracting STDs and HIV is heightened.
- National policies and programs on HIV/AIDS should incorporate a human rights and women's human rights approach. Incorporate programs that promote economic and educational opportunities for women and protect their property, land and inheritance rights into these national strategies.
- Legislation should promote access to justice for women living with HIV/AIDS by establishing accessible and specialized structures (courts, police units and legal aid) to address their human rights violations.
- Laws should support shelters for women who have lost their land and homes to property grabbing. Legislation should provide funding and support for alternative housing to women living with HIV/AIDS and their children. Such housing should satisfy adequate housing standards. See: Section on Right to Adequate Housing. Planners should ensure that women living with or affected by HIV/AIDS should be able to participate in the planning and developing of such housing programs.
- Legislation should provide for public awareness activities and trainings on women's human rights, non-discrimination and its linkages to HIV/AIDS. In addition to targeting women living with or affected by HIV/AIDS, efforts should aim to educate the general public, community leaders, legal actors, land officials, media, and local and national agencies.
- Legislation should provide for economic opportunities to women living with or affected by HIV/AIDS. Programs to promote economic empowerment include appropriate credit schemes, loans and other programs that will facilitate their access to a livelihood. Efforts should ensure access to social services, land, credit, employment opportunities, markets and improved agricultural techniques

(See: Centre on Housing Rights and Evictions, [Shelter from the Storm: Women's Housing Rights and the Struggle against HIV/AIDS in Sub-Saharan Africa](#), 2009. UNDP, [HIV/AIDS and Poverty Reduction Strategies](#), 2002; UNAIDS Global Coalition on Women and AIDS, [Economic Security for Women Fights AIDS](#), Issue No. 3)

Promising Practices: UNAIDS Global Coalition on Women and AIDS has documented several promising practices with respect to promoting the human rights of widows living with HIV/AIDS. In Kenya, five widows living with HIV created the Young Widows Advancement Program (YWAP) to counter public stigmatization, address the effects of HIV among widows and help widows protect their property, inheritance and other rights. YWAP provides psychosocial support, support groups, legal aid, paralegal assistance and will-writing workshops. In Tamil Nadu, India, the state AIDS agency collaborates with the Tamil Nadu Corporation for Women's Development in using microenterprise/savings projects to conduct education on HIV prevention. The program incorporates HIV information into its women's self-help groups. Eighty percent of the 193,000 rural self-help groups (3 million members) have integrated HIV education into their programs. See: UNAIDS Global Coalition on Women and AIDS, [Economic Security for Women Fights AIDS](#), Issue No. 3.

See: UNAIDS Global Coalition on Women and AIDS, [Economic Security for Women Fights AIDS](#), Issue No. 3.

Post-conflict situations

Drafters should also address the needs of widows in post-conflict situations. Widows may have survived sexual assault, suffered physical injuries, be vulnerable to domestic violence, face economic challenges, be acting as the single head of household, have refugee status or be internally displaced, and have lost their right to the marital home, property, and land upon their husband's death. Widows should be involved in peacebuilding and reconstruction efforts.

Roles and responsibilities

Coordinated community response

- Coordinated community response is an intervention strategy developed by the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota, USA. This strategy, often called the "Duluth model," is a "system of networks, agreements, processes and applied principles created by the local shelter movement, criminal justice agencies, and human service programs that were developed in a small northern Minnesota city over a fifteen year period. It is still a project in the making." *From:* Ellen Pence & Martha McMahon, [A Coordinated Community Response to Domestic Violence](#) (1999), The National Training Project, Duluth, Minnesota. Given the various health, legal, economic and social needs of widows, coordinating the response across sectors will promote protection of survivors/complainants.

- Although there is no one model that will work in every context, the model used by DAIP in Duluth is one of the most successful coordinated community response projects and has been adapted for use in communities in many different parts of the world. (See: [Adapting the Duluth Model](#), StopVAW, The Advocates for Human Rights; and [Coordinated Community Response](#), StopVAW, The Advocates for Human Rights)
- Legislation should include provisions that require agency collaboration and communication in addressing the maltreatment of widows. NGO advocates who directly serve victims should have leadership roles in such collaborative efforts. When police, judicial officials, NGOs that provide direct service to victims of violence, and medical providers coordinate their efforts to protect victims and hold abusers accountable, these efforts are more successful. Coordination helps to ensure that the system works faster and better for victims; that victims are protected and receive the services they need; and that abusers are held accountable and cease their abusive behavior.

(See: [Council of Europe General Recommendation Rec\(2002\)5](#), para. 27 [Benefits of Coordination](#), StopVAW, The Advocates for Human Rights; [Goals and Strategies of Intervention](#), StopVAW, The Advocates for Human Rights; and [Community Response Participants](#), StopVAW, The Advocates for Human Rights)

(See also: [Implementation of Laws on Violence against Women and Girls](#))

Roles of police

The [UN Handbook](#) sets forth basic obligations of police in responding to violence against women. Legislation should provide that police officers should:

- respond promptly to every request for assistance and protection in cases of violence against women, even when the person who reports such violence is not the complainant/survivor;
- assign the same priority to calls concerning cases of violence against women as to calls concerning other acts of violence, and assign the same priority to calls concerning domestic violence as to calls relating to any other form of violence against women; and
- upon receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the complainant/survivor, including by:
 - interviewing the parties and witnesses, including children, in separate rooms to ensure there is an opportunity to speak freely;
 - recording the complaint in detail;
 - advising the complainant/survivor of her rights;
 - filling out and filing an official report on the complaint;
 - providing or arranging transport for the complainant/survivor to the nearest hospital or medical facility for treatment, if it is required or requested;
 - providing or arranging transport for the complainant/survivor and the complainant/survivor's children or dependents, if it is required or requested;

- providing protection to the reporter of the violence, and;
- removing the alleged perpetrator from the scene if there is cause to believe that the complainant/survivor is at risk for harm.

See: [UN Handbook](#), 3.8.1.

- Legislation should require the police to inform the complainant/survivor of her rights and options under the law.

Promising practice: [Family Violence: A Model State Code](#), Section 204, describes a comprehensive written notice that police should be required to give to a complainant/survivor for later review. The Commentary to the Model State Code notes that “An officer may be the first to inform a victim that there are legal and community resources available to assist him or her. Written notice is required because a victim may not be able to recall the particulars of such detailed information given verbally, particularly because the information is transmitted at a time of crisis and turmoil. This written menu of options...permits a victim to study and consider these options after the crisis.”

The notice describes the options which a victim has: filing criminal charges, seeking an order for protection, being taken to safety, obtaining counseling, etc. The notice contains a detailed list of the optional contents for an order for protection. This would be of great assistance to a complainant/survivor who may not be familiar with the purpose of an order for protection. When a complainant/survivor is given a written notice and description of these options, it enables her to consider her options and to decide what is best for her safety and for the safety of her family.

- Legislation should specifically preclude police from offering mediation or assisted alternative dispute resolution services to parties. Police should not attempt to improve relations in the family by offering these services or by mediating a dispute. (See: [UN Handbook](#) 3.9.1; Section on [Mediation or assisted alternative dispute resolution](#))
- Drafters should consider a probable cause standard of arrest, which allows police to arrest and detain an offender if they determine that there is probable cause that a crime has occurred even if they did not witness the offence. (See: [Minnesota 518B.01 subdv. 14\(d\)\(2\)\(e\)](#) and law of [South Carolina](#), Sec. 16-25-70 (A); [Law Enforcement Reform Efforts](#), StopVAW, The Advocates for Human Rights)
- Police should exercise due diligence in pursuing and investigating all cases of maltreatment of widows, including filing a report on reported cases of property grabbing. Legislation should empower the police to intervene in property grabbing and forced eviction to protect widows’ human rights.

(See: The following sub-sections in [Drafting Legislation](#): Domestic Violence, Sexual Assault, Sex Trafficking of Women and Girls, Harmful Traditional Practices, Honour Crimes; and [Implementation of Laws](#) on Violence against Women and Girls)

Roles of judges

- The court plays an integral role in implementing legislation prohibiting violence against women, including widows, as it bears the ultimate responsibility for case outcomes. The court can address the needs of the many victims of violence against women by providing victims with contacts to services, by monitoring the behavior of perpetrators and mandating them to appropriate interventions, and by protecting women from their abusers. A court that is strong and committed to implementing legislation prohibiting violence against women must also use its authority to demonstrate publicly the civil and criminal justice systems' commitment to effectively addressing crimes of violence against women.
- Many laws also delineate special roles for courts and prosecutors related to effective implementation. In general these laws focus on:
 - Mandating or encouraging special protections for victims in court;
 - Requiring the development of specialized courts or tribunals;
 - Requiring the establishment of specialized prosecutors units;
 - Requiring training for judges and prosecutors;
 - Requiring the development of special policies, procedures and protocols for handling cases of violence against women;
 - Requiring that legal proceedings occur on a timely basis.
- Legislation should provide that judges and court personnel should receive continuing education on: the causes, nature, forms and extent of the maltreatment of widows; laws and practices on inheritance, property and land rights; the intersection of HIV/AIDS with widows and their inheritance, property, parental and land rights; practices designed to promote the safety of victims and family members, such as [safety plans](#); resources available for survivors/complainants and perpetrators; the impact of harmful practices with regard to deprivation of children from their mothers who are widow; sensitivity to gender bias, and cultural, racial, and sexual issues; and the short- and long-term impact of the maltreatment of widows and their children. See: Section on Training for Legal Actors on Legal Reform and Succession.
- Drafters should consider creating specialized courts to hear cases on the maltreatment of widows in jurisdictions where this abuse is pervasive. Cases could include including forced evictions, property grabbing, inheritance claims, deprivation of children, widow inheritance and sexual assault. For example, the Family Law in Serbia requires the establishment of specialized court councils for cases of domestic violence and also outlines special procedures that courts must follow in cases of domestic violence. See: [Family Law](#), UN Secretary-General's database on violence against women. Any such court should ensure that all court personnel, including judges, undergo training to sensitize them to women's human rights, forms of widow maltreatment, and the laws on property, inheritance, family and land. Legislation should provide the survivor/complainant's right to free legal aid in all legal proceedings, including

inheritance and property claims and claims for compensation or restitution, as well as free court support, such as accompaniment and/or representation by an appropriate service or intermediary, and where necessary, free access to qualified and objective interpretation.

- Legislation should state that the judiciary must promote accountability for the perpetrator and safety for the complainant/survivor by instituting penalties for violations of orders for protection (see section on [Orders for Protection](#)) and by implementing safety procedures for complainant/survivors in the courtroom such as the presence of security guards, court escorts, and separate waiting rooms for complainant/survivors and violent offenders. For more information, see [Domestic Violence Safety Plan](#) (“Be Safe at the Courthouse” section).

See: The following sub-sections in [Drafting Legislation](#): Domestic Violence, Sexual Assault, Sex Trafficking of Women and Girls, Harmful Traditional Practices, Honour Crimes; and [Implementation of Laws](#) on Violence against Women and Girls.

Roles of prosecutors

The [UN Handbook](#) sets forth basic obligations for prosecutors with regard to cases of violence against women. Legislation should:

- establish that responsibility for prosecuting violence against women lies with prosecution authorities and not with complainants/survivors of violence, regardless of the level or type of injury;
- require that complainants/survivors, at all relevant stages of the legal process, be promptly and adequately informed, in a language they understand, of their rights;
 - the details of relevant legal proceedings;
 - available services, support mechanisms and protective measures;
 - opportunities for obtaining restitution and compensation through the legal system;
 - details of events in relation to their case, including specific places and times of hearings; and
 - release of the perpetrator from pre-trial detention or from jail; and
- require that any prosecutor who discontinues a case of violence against women explain to the complainant/survivor why the case was dropped.

(See: [UN Handbook](#))

- Drafters must ensure that crimes involving widow maltreatment are not treated less seriously than other crimes. Legislation should state that *ex officio* prosecution is exercised in all cases of violence against widows, many of whom may lack the resources to initiate a prosecution claim themselves. For example,

in the law of [Austria](#), *ex officio* prosecution is exercised at all levels of injury in cases of violence. (See: [UN Handbook](#), 3.8.2)

- Legislation should require prosecutors to ensure that all available evidence has been collected by the police investigating body. By relying primarily on the evidence collected by the police rather than the victim's testimony, prosecutors may be able to reduce the risk of retaliation by an abuser and increase the likelihood of a successful prosecution.
- Legislation should mandate that prosecutors investigate the level of risk to widows in maltreatment cases and consider appropriate protective measures in cases of high risk. (See: Section on [Lethality or Risk Assessment, Domestic Violence](#)) Other agencies of the criminal justice system, including police and judges, should also assess the level of risk to widows.
(See: [Role of Prosecutors](#), StopVAW, The Advocates for Human Rights; [Prosecutorial Reform Efforts](#), StopVAW, The Advocates for Human Rights)
- Legislation should require that prosecutors keep the complainant/survivors informed of the upcoming legal proceedings and their rights therein, including all of the court support systems in place to protect them.

Promising practice: The law of [Spain](#) creates the position of “Public Prosecutor for cases of Violence against Women,” who must supervise, coordinate, and report on matters and prosecutions in the Violence against Women Courts. Article 70 The legislation also requires prosecutors to notify complainant/survivor of the release of a violent offender from jail and requires prosecutors who dismiss cases of violence against women to tell the complainant/survivor why the case was dismissed.

- Legislation should include a pro-prosecution policy in cases where there is probable cause that violence against the widow has occurred. This will ensure that the violence is treated seriously by prosecutors and allow complainant/survivors to retain some agency about the decision. See: [UN Handbook](#), 3.8.3

(See: [Domestic Violence, Sexual Assault, Sex Trafficking of Women and Girls, Harmful Traditional Practices, Honour Crimes, Implementation of Laws on Violence against Women and Girls](#))

Mediation or assisted alternative dispute resolution provisions

- Legislation should specifically preclude police, legal system officials and other leaders from offering mediation or assisted alternative dispute resolution services to resolve issues between widows and her in-laws or heirs of the deceased, both before and during legal proceedings in widow maltreatment cases. Police, judges and other leaders should not attempt to improve relations in the family by offering these services or by mediating a dispute. See: [UN Handbook](#) 3.9.1 and Section on [Roles of Police](#).

- Mediation reflects an assumption that both parties are equally at fault for the violence. It assumes that both parties have equal bargaining power, yet in reality an abuser may hold tremendous power over a victim. Traditional patrilineal societies that assume the marital property and children belong to the husband's side of the family further weaken any bargaining power a widow may have. Mediation also removes a domestic violence case from public view and objective judicial scrutiny.

See: [Mediation](#), StopVAW, The Advocates for Human Rights; and [Family Violence: A Model State Code](#), Sec. 311

Training for legal actors on legal reform and succession

- Legislation should mandate training on women's human rights and on inheritance, land and property rights in police academies and law schools. Legislation should mandate continued and regular training on these topics for lawyers, police, judges and prosecutors. Training should be developed in coordination with or carried out by organizations that work with women and widows and aim to educate legal actors about the law and sensitize them to the maltreatment of widows and discrimination against women. For example, the Zimbabwe Widows and Orphans Trust Project facilitates weekly discussions, called "Widows' Days," during which widows meet with judges to inform them of the challenges they face. See: [Widows, Inheritance and Human Rights](#) (Sponsored by UNIFEM, Widows for Peace Through Democracy, Women's International League for Peace and Freedom (WILPF), NGO side event, Report, UN Commission on the Status of Women, New York, 4 March 2005.)

Other provisions related to the maltreatment of widows

Statistics gathering

- States should collect gender-disaggregated data on the maltreatment of widows, including laws and practices on inheritance, property, widow inheritance, levirate and sororate marriages, forced evictions and property grabbing, on a domestic, regional and international level and cross-compare them to other statistics on crime, gender equality and migration. An important part of gathering statistics for the maltreatment of widows requires the establishment of registration systems for births, deaths and marriages. (See: [Registration of Marriage and Births](#)) Also, drafters should establish a system for the registration of widow inheritances, forced evictions, property grabbing and forced marriage cases by all agencies, neighborhood, local and regional authorities, public service providers and non-governmental organizations working on the issue.
- Reliable statistics on the prevalence of violence against women are essential to developing effective legislation and to developing strategies and protocols for the implementation of the legislation. Legislation should require the state to develop

a methodology to obtain statistics on each of the types of violence against women. (See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#))

- Statistics on the frequency of acts of violence against women should be obtained from relevant government ministries, law enforcement, the judiciary, health professionals, land title and registration offices, and non-governmental organizations which serve survivors of violence against women. These acts should be disaggregated by gender, age, relationship between offender and survivor, race, ethnicity, and any other relevant characteristics. Monitors should note whether or not such data is publicly available and easily accessed. See: Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and state response, [A/HRC/7/6/Add.5](#), p. 19, CENWOR in Sri Lanka, and CORE GAD in Philippines (ESCAP paper, p. 6)
- Statistics should also be gathered on the causes and consequences of the acts of violence against women. See: UN Handbook, 3.3.2, Guatemala's Law against Femicide and other Forms of Violence against Women (2008), Mexico, Law on Access of Women to a Life Free of Violence (2007). Data should also be collected on offenders, including whether and when an abuser re-offends. See: UN Handbook 3.3.2.
- Monitors should also determine the number (per population statistics), geographic distribution and use statistics for hotlines, shelters and crisis centers. See: Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and state response, [A/HRC/7/6](#), p. 28, and Uganda program: www.wecanendvaw.org See also: www.raisingvoices.org/
- Monitors must also determine the numbers of cases of all forms of violence against women and girls that are reported to law enforcement officials, and whether or not they are charged, if they go to trial, and how many convictions result.
- In some states, statistics on many of these issues will be readily available in administrative offices or national statistics or crime bureaus; in others, monitors will need to pose exact and strategic questions to government officials in law enforcement administration who are in a position to provide the information that is required. This may involve a multi-step process of formal interview requests but it can be well worthwhile.
- For an analysis of national surveys carried out by the countries at the conference of European statisticians to measure violence against women, see the Economic Commission for Europe, Work session on gender statistics, <http://www.unece.org/stats/documents/2006.09.gender.htm>

Promising practice on prevalence surveys: See: [Addendum on Developing Transnational Indicators on Violence Against Women to Report of the Special Rapporteur on violence against women, its causes and consequences](#), 25 February 2008, A/HRC/7/6/, p. 12-13.

See: [Monitoring of Laws on Violence against Women and Girls](#).

Monitoring

Legislation on violence against women should include a provision which creates a specific body to monitor the implementation of legislation on violence against women. This body should include members of parliament, national statistics offices, law enforcement administration and ministries for women and health. It should gather and analyze information on the implementation of the legislation, respond to parliament, and provide a public report of its efforts. The legislation should mandate adequate funding for regular review of the implementation of the legislation on violence against women.

See: Monitoring of Laws.

Public awareness and education

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

- general campaigns sensitizing the population about violence against women as a manifestation of inequality and a violation of women's human rights; and
- specific awareness-raising campaigns designed to heighten knowledge of laws enacted to address violence against women, in particular inheritance and property rights, and the remedies they contain.
- public information campaigns aimed at educating women and girls about available resources.
- trainings and workshops on estate planning for the public that emphasizes the rights of women in inheritance.
- education on HIV/AIDS and its prevention in consultation with HIV/AIDS organizations and advocates. Such education should address the interconnection between HIV/AIDS and women's human rights.

Promising Practice: Legislation should support efforts by advocates and civil society to conduct public education activities. The Justice for Widows and Orphans Project (JWOP) in Zambia hosted a call-in radio program on widows and orphans a weekly basis on Lusaka and national stations. JWOP also created two 13-week programs for television, which presented dialogues with widows and orphans, advocates working on the issue and information about JWOP. A majority of the television programs addressed issues of property and inheritance. The public impact has been positive, and JWOP's Victims Support Unit reported a large increase in calls, inquiries and accounts of property grabbing during the shows' running. See: Varga, Christine A., [The Case of the Justice for Widows and Orphans Project in Zambia](#), ICRW, 2006.

- Outreach should target and engage religious and community leaders to increase their awareness about women’s human rights, maltreatment of widows and the law. Public education programs should encourage them to emphasize to their communities that widows’ rights must be protected. It is essential that religious and traditional leaders understand domestic laws related to the maltreatment of widows and how certain practices violate women and girls’ human rights.
- Legislation should encourage the sensitization of journalists and other media personnel regarding violence against women.

See: [Implementation of Laws](#) on Violence against Women and Girls; [UN Handbook](#), 3.5.2, 3.5.4.

Resources for drafting legislation on maltreatment of widows

- Canadian HIV/AIDS Legal Network, *Respect, Protect and Fulfill: Legislation for Women’s Rights in the Context of HIV/AIDS*, Vol. Two: Family and Property Issues, 2009. Available in [English](#).
- Global Rights, *Conditions, Not Conflict: Promoting Women’s Human Rights in the Maghreb through Strategic Use of the Marriage Contract*, 2008. Available in [English](#).
- Knox, Anna, et al., *Connecting Rights to Reality: A Progressive Framework of Core Protections for Women’s Property Rights*, International Center for Research on Women.
- Available in [English](#).
- Global Land Tool Network website; available in [English](#).
- UN-HABITAT website. Available in [English](#).
- United Nations Division for the Advancement of Women and United Nations Economic Commission for Africa, *Good practices in legislation on “harmful practices” against women*, (2010). Available in [English](#).
- Using the Law to Tackle Accusations of Witchcraft: HelpAge International’s Position (HelpAge International, 2011). Available in [English](#).

Dowry-related Violence

Main strategies for drafting legislation on dowry-related violence

Objectives, definitions and scope of legislation

Rights of complainants/survivors

Coordinated community response and implementation of laws

Criminal justice system response to dowry-related and domestic violence

Criminal laws

Civil remedies on dowry-related violence

Other provisions related to dowry-related and domestic violence laws

Main strategies for drafting legislation on dowry-related violence

- Drafters should address dowry-related violence through a domestic violence framework. Thus, drafters should provide for a civil order for protection remedy, as well as criminal provisions to hold perpetrators of violence responsible for assault or domestic assault.
- Drafters should ensure that dowry deaths are also criminalized, either as first-degree murder or as an aggravating factor in homicide sentencing schemes.
- Drafters should ensure that illegal demands for dowry are addressed by criminal laws on extortion, as well as civil laws on recovering compensation.
- Drafters should establish regulation over and a registration system for dowry gifts.
- Institute property and inheritance reform to ensure women may own, administer and inherit property on a basis equal to men.
- Ensure that existing laws that provide equality in property and inheritance rights are enforced.
- Promote public education campaigns to raise awareness among women of their property and inheritance rights.

Core elements of legislation on dowry-related violence

The following elements should be established as the core elements of any legislation addressing dowry-related violence:

- Criminalization of dowry-related violence and acts of domestic violence;
- Criminalization of dowry-related deaths;
- Cross-reference to accompanying civil remedy laws that protect against domestic violence and provide a fully developed order for protection civil remedy, including an emergency or ex parte order for protection;

- A criminal offense for violation of the order for protection with a cross-reference to any relevant provisions of the criminal laws, such as punishment for various levels of offenses;
- Enhanced penalties for multiple violations of the dowry-related violence legislation and the order for protection;
- Enhanced penalties for other domestic violence-related criminal offenses
- Prohibition of perpetrators from possessing a firearm, acid, and other dangerous weapons;
- Cross-reference to corresponding criminal laws that punish extortion and civil tort remedies for extortion;
- Cross-reference to corresponding laws that prohibit discrimination against women and girls in inheritance;
- Allowing courts, in protection orders, to order child custody and support to the non-violent parent and allowing courts to enter a protection order as to the child;
- Provisions on implementation of the law, including training of relevant professionals, monitoring and evaluation of the law, and funding of the implementation of the law;
- Public education to increase awareness about women’s human rights , dowry-related violence, and property and inheritance laws;
- Assistance and support for victims of dowry-related violence;
- Statistics gathering and research on the prevalence of the problem, and;
- Establishment of an inter-agency task force to ensure a coordinated community response to dowry-related violence and domestic violence.

(See: [Drafting Domestic Violence Laws](#), StopVAW, The Advocates for Human Rights; and Domestic Violence sub-section)

Sources of international law

International Treaties and Instruments

These international statements of law and principle provide a foundation for the right to be free from dowry-related violence.

- The [Universal Declaration of Human Rights](#), 1948, states that “Everyone has the right to life, liberty and security of person” in Article 3. In Article 7, it states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” In Article 8, it declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
- The [International Covenant on Civil and Political Rights](#) (1966) prohibits discrimination on the basis of sex, and mandates states parties to “...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” (Article 2)

- The [International Covenant on Economic, Social and Cultural Rights](#) (1976) declares that states parties must "...ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth [therein]." (Article 3)
- The [Convention of the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979, defines discrimination against women as:

"...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Article 1)

State parties to CEDAW must eliminate this discrimination by adopting "...appropriate legislative and other measures, including sanctions where appropriate..." and must agree "To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination..." (Article 2)

- In [General Recommendation 19](#), 1992, the Committee on the Elimination of Discrimination Against Women interpreted the term "discrimination" used in CEDAW to include gender-based violence by stating that it is

"...violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence." (Paragraph 6)

It also rejects customary or religious justifications for domestic violence:

"Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms." (Paragraph 11)

Finally, the Committee recommends that "States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity..." 24(b)

- The United Nations [Declaration on the Elimination of Violence against Women](#), (DEVAW) 1993, recognizes dowry-related violence as a form of violence against women (Art. 2(a)). It also acknowledges that the root cause of violence against women is the subordinate status of women in society by stating that:

“...violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men...” Preamble.

Regional treaties

- The [American Declaration of the Rights and Duties of Man](#) (1948) states that:

“The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness...”
Preamble

It declares that “Every human being has the right to life, liberty and the security of his person.” Article I. In Article V, it states that “Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.” The Declaration also states that “Every person may resort to the courts to ensure respect for his legal rights.” Article XVIII.

- The [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#) (1994) (Convention of Belém do Para) states that women have “the right to be free from violence in both public and private spheres.” Article 3 It declares that a woman has “The right to simple and prompt recourse to a competent court for protection against acts that violate her rights...” Article 4 (g) States parties must exercise due diligence to prosecute, punish and prevent such violence, and “...include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary...” Article 7
- The [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) (2003) (The Maputo Protocol) mandates states parties to “...adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.” Article 4

- The [Declaration on the Elimination of Violence Against Women in the ASEAN Region](#), (2004), includes this agreement by states parties:

“To enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimisation of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody...” Section 4.

Specific legislation on dowry-related violence

Dowry-related violence may be addressed in the constitutions of states, in criminal codes, civil codes, in administrative provisions, in gender equality provisions and many other contexts. Lawmakers are encouraged to provide protection against dowry-related violence within domestic violence civil and criminal laws that take into account the dynamics of dowry-related violence, including the scope of possible perpetrators, the repeat, low-level injuries, murders disguised as accidents or suicides, the connection between harassment/violence and dowry demands, the explicit or implicit nature of dowry demands, and the need for urgent protective remedies.

Objectives, definitions and scope of legislation

Drafting the legislative preamble

The legislative preamble sets the stage for the entire piece of legislation. It should include basic principles of women’s human rights, which are described in the international human rights instruments, declarations and regional instruments above.

Contents of legislative preamble

A legislative preamble to a law on dowry-related violence should:

- Define discrimination against women and girls as a restriction based upon sex which impairs the rights of women and girls. (See: [United Nations Handbook for legislation on violence against women](#), 3.1.1 (hereinafter UN Handbook))
- State that the legislation should be comprehensive and criminalize all forms of violence against women. (See: [UN Handbook](#), 3.1.2)
- State that there may be no customary or religious justifications for dowry-related violence. (See: [UN Handbook](#), 3.1.5; and [the Report of the Special Rapporteur on violence against women, its causes and consequences, a framework for model legislation on domestic violence, 1996, E/CN.4/1996/53/Add.2](#), (hereinafter the UN Model Framework,) para.8)
- State that the law will protect all women and girls. (See: [UN Handbook](#) 3.1.3)

For example, one of the first articles of the [Maria da Penha Law \(2006\) of Brazil](#) (hereinafter law of Brazil) states that:

“ All women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement.” (Article 2)

- State that the root cause of violence is the subordinate status of women and girls in society. (See: [General Recommendation 19](#), Article 11; [UN Secretary-General's study on violence against women](#), para. 30; [Other Causes and Complicating Factors](#), StopVAW, The Advocates for Human Rights; and [The International Legal Framework](#), StopVAW, The Advocates for Human Rights)
- State the principles of the legislation are to ensure the safety of the complainant/survivor and to provide accountability for the perpetrator(s). (See: [Drafting Domestic Violence Laws](#), StopVAW, The Advocates for Human Rights; and [United Nations Model Legislation](#), StopVAW, The Advocates for Human Rights)
- Acknowledge the prevalence of dowry-related violence and deaths and recognize these offenses as violence against women.

Definition of dowry-related violence

The violence and deaths associated with dowry demands constitute domestic violence. Similar to acts of domestic violence, the acts used in dowry-related offenses include physical, emotional, and economic violence, as well as harassment as means to exact compliance or to punish the victim. Victims will be best served when protected by an expansive domestic violence legislative framework that encompasses dowry-related violence. Drafters should define the scope of prohibited acts within a domestic violence framework, taking into account the dynamics of dowry-related violence. (See: [What Is Domestic Violence](#), StopVAW, The Advocates for Human Rights) Lawmakers should include violence and harassment related to dowry demands in a definition of domestic violence. Demands for dowry should not be a requisite element in domestic violence laws, however, because of their subtle and often implicit nature.

Promising practice: India's civil law, [Protection of Women from Domestic Violence Act](#), includes dowry-related harassment as a form of domestic violence (Section 3(b)). It is important dowry-related violence and deaths be prohibited under criminal laws, as well. (See [Harmful practices against women in India: An examination of selected legislative responses](#), p. 10.) [The Protection of Women From Domestic Violence Act \(2005\) of India](#) defines domestic violence as follows:

3. Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

*(b) disposal of household effects, any alienation of assets whether **movable or immovable, valuables, shares, securities, bonds and the like** or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration. Chapter II, 3

- In 2008, a group of experts at meetings convened by the United Nations recommended that “It is therefore essential that any definition of domestic violence that includes psychological and/or economic violence is enforced in a gender-sensitive and appropriate manner. The expertise of relevant professionals, including psychologists and counselors, advocates and service providers for complainants/survivors of violence, and academics should be utilized to determine whether behavior constitutes violence.” (See: [UN Handbook](#), 3.4.2; and [UN Model Framework](#), II 3, which urges States to adopt a broad definition of the acts of domestic violence, in compatibility with international standards; and [Gender-Based Violence Laws in Sub-Saharan Africa](#), (2007), p. 52) In 2008, United Nations experts recommended that the definition of domestic violence include economic violence as well as physical, psychological and sexual violence. See: [United Nations Handbook for legislation against women](#), p. 25. The group of experts issued a caveat that by including psychological and economic violence in the definition of domestic violence, drafters and legislators may be creating opportunities for perpetrators to counter-claim psychological or economic abuse against those to whom they are violent. For example, a disgruntled violent abuser may seek protection measures against his wife for using property owned by him. Placing physical abuse on par with economic abuse may lead a perpetrator to claim that physical violence is an appropriate response to an act he sees as economically disadvantageous to him. In the case of dowry-related violence, the husband may argue that the failure to meet dowry remands, such as funds for a family business or the household, constitutes economic abuse against him. Claims of psychological and economic violence may be very difficult to prove in legal proceedings, as well.

- The [Violence Prevention Alliance of the World Health Organization](#) defines violence as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.” If drafters choose to include economic violence, they may consider drawing upon the definition from the Violence Prevention Alliance, focusing economic violence on the intentional use of power, whether threatened or actual, that results in or is likely to result in maldevelopment or deprivation of another person. Drafters should issue legal commentary clarifying that economic deprivation applies to those staples necessary for an adequate standard of living, such as adequate food, clothing and housing, but not material goods nor unsatisfied dowry demands. Drafters may wish to specify in dowry-related domestic violence laws that economic deprivation for dowry-related violence purposes is defined as that aimed at women and girls (See: Article 4(1), [CEDAW](#)). The implementation of such legislation that includes the broader definition of domestic violence should be carefully monitored for abuse of process or retributive counterclaims, and if such abuse occurs, the law should be amended. See: *Monitoring of Laws on Violence against Women and Girls*.
- Drafters should carefully consider the types of violence described in the statutory definition. Many experts believe that the definition should include all acts of physical, psychological and sexual abuse between family and household members or intimate partners, as well as in-laws. Drafters should take into account the specific forms of violence perpetrators use in dowry-related crimes and deaths. For example, offenders may use violence disguised as suicides or accidents, such as stove or kerosene disasters, to burn or kill women for failing to meet dowry demands. (See: Shahnaz Bokhari, [Good practices in legislation to address harmful practices against women in Pakistan](#), at 9) Acid attacks. Offenders may also use more insidious means to demand dowry, such as starvation, deprivation of clothing, evictions, and false imprisonment. In addition, drafters should ensure that other acts common in these cases, such as extortion, constitute criminal offenses when they occur between a woman/her family and her groom/fiancée/in-laws.
- If a domestic violence law contains a detailed description of prohibited behaviors, it may limit judicial bias. (See: [Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices](#), UNIFEM, June 2009) Drafters should consider, however, that when a detailed list of acts of abuse is included in legislation, it may also have the effect of excluding some unanticipated abusive behavior from legal sanctions. If drafters choose to list forms of violence, the law should specify that the list is not inclusive of all forms of violence.
- Legislation should include the following provision in a definition of domestic violence: “No marriage or other relationship shall constitute a defence to a

charge of sexual domestic violence under this legislation.” (See: [UN Handbook](#), 3.4.3.1)

- Drafters should consider including a definition of domestic violence as a course of conduct. For example, [The Domestic Violence Act \(2007\) of Sierra Leone](#) (hereinafter the law of Sierra Leone) contains the following provision:

4. (1) A single act may amount to domestic violence.

(2) A number of acts that form a pattern of behaviour may amount to domestic violence even though some or all of the acts when viewed in isolation may appear minor or trivial. Part II 4

(See: the [Combating of Domestic Violence Act \(2003\) of Namibia](#) (hereinafter law of Namibia) Part I 2 (3) and (4))

- Legislation should include certain acts which have only recently come to be recognized as serious threats to the complainant/survivor, and which may not be included in criminal law provisions, such as stalking, sometimes called harassment, and acts involving the latest forms of technology. (See: Domestic Violence; [Stalking](#), StopVAW, The Advocates for Human Rights; Bortel, Angela, “[Technology and Violence against Women](#),” StopVAW, The Advocates for Human Rights; [Minnesota, USA Statute 609.749](#); Lemon, Nancy K.D., “[Domestic Violence and Stalking: A Comment on the Model Anti-Stalking Code Proposed by the National Institute of Justice](#)” (1994); and Minnesota Coalition for Battered Women, “[Facts About Intimate Partner Stalking in Minnesota and the United States](#)” (2009))

Defining dowry-related violence and dowry

- Legislation should provide a definition for dowry-related violence. The UN DAW Expert Group Meeting defines dowry-related violence or harassment as “any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage.” (See: [Good Practices In Legislation on “Harmful Practices” Against Women](#), Section 3.3.4.1)
- Laws should expansively define dowry in terms of its form and when it is demanded, given or received. Dowry should include gifts, money, goods or property given from the bride/wife’s family to the groom/husband/in-laws before, during or anytime after the marriage. Laws should frame dowry expansively as a response to explicit or implicit demands or expectations. Laws should omit reference to “in connection with” or “in consideration of” the marriage, to ensure the scope includes all dowry demands whether explicitly connected to the marriage or not.
 - For example, the following definition will likely prove problematic as it may pose problems of proof. The Parliament of Bangladesh defines dowry as “money, goods or any property which has been given or agreed to give to

the bride-groom or his father or mother or any person on his behalf, directly or indirectly, at the time of marriage or before marriage at any time after marriage in condition with the smooth continuation of marital life or as a consideration given by the side of the bride and the money, goods or property which has been demanded from the bride or her father or mother or any person on her behalf, by the bride-groom or his father or mother or any other person on his behalf as the above mentioned condition or consideration.” (See: [Prevention of Oppression of Women and Children Act \(2000\)](#), Parliament of Bangladesh, Art. 2(j) (unofficial translation)) Laws should not require dowry be given as a condition for the smooth continuation of marital life or as consideration. Such a requirement may prove challenging to prove because of the covert or implicit nature of dowry demands and expectations.

- India defines dowry as:
“any property or valuable security given or agreed to be given either directly or indirectly-
 - (a) by one party to a marriage to the other party to the marriage; or*
 - (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.*

(See: [Dowry Prohibition Act, India, 1961](#), Art. 2.)

(See: Domestic Violence)

Scope of persons protected by law and culpable persons

- Drafters should strive to make the scope of persons to be protected by a domestic violence law clear and reflective of current reality. The scope of domestic violence legislation has, in many countries, been expanded to include not only married couples but those who are or have been in intimate relationships, as well as family members and members of the same household. (See: [UN Handbook](#), 3.4.2.2)

For example, the [Organic Act on Integrated Protection Measures against Gender Violence \(2004\) of Spain](#) (hereinafter law of Spain) defines a domestic relationship broadly, going beyond intimate or formerly intimate relationships to include those between family or household members and minors or disabled individuals under guardianship or custody.

- Drafters should ensure the scope of domestic violence legislation reflects the dynamics of dowry-related violence by including in-laws and former spouses as potential offenders and including fiancées as potential victims in the law. In dowry-related violence, offenders may include in-laws who do not reside in the

same household as their daughter-in-law. Offenders may also include former husbands who exploit religious and cultural practices to escape the reach of the law. For example, a husband may divorce his wife according to Muslim tradition by saying “I divorce you” three times, a tactic he might employ to remove himself from the reach of the law before the woman reports the case. Victims may include brides who will marry but have not been in an intimate relationship with the groom, e.g. an arranged marriage. Also, drafters should be aware of the coercive and often subtle nature of dowry demands when defining those culpable. No explicit demands for dowry may occur, but the bride’s family may feel compelled to give dowry to maintain the marriage, avert abuse of the bride by the in-laws and husbands, or meet community expectations. In other words, the husband and his family are exerting the same power and control that is characteristic of domestic violence on the bride and her family.

Promising Practice: Albania’s [Law on Measures Against Violence in Family Relations](#) includes in its definition of family members “[p]ersons related by direct blood line, including parents and adoptive children of the spouse or of the cohabitating partner.” (Article 3(3)(ç)). Such a provision would encompass in-laws who commit domestic violence against the victim.

- Laws should seek to punish offenders who take or abet the taking of dowry in cases of dowry-related violence or deaths. The Expert Group Meeting paper recommends that laws penalize those who receive dowry. Drafters should avoid adopting criminal laws that penalize both the givers and takers of dowry equally because of the coercive dynamics of dowry demands. Furthermore, such laws may deter the victim or her family from reporting acts of dowry-related violence because of their own potential for culpability.

Rights of complainants/survivors

Rights of complainant/survivors

- Legislation should include a statement of the rights of complainant/survivors. It must promote complainant/survivor safety, agency, and assistance and prevent the re-victimization of the complainant/survivor. It should remove barriers that may prevent them from seeking safety, such as concerns about punishment for giving dowry, child custody, access to shelters and long-term housing, and legal aid. (See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009; and [Combating violence against women: minimum standards for support services](#) (2008))

For example, [Spain](#)'s law contains a guarantee of victim's rights (Article 17). The statement of rights should inform the complainant/survivor of legal remedies (such as the order for protection and ex parte order for protection) and the support services offered by the state.

CASE STUDY: The main text of India's [Protection of Women from Domestic Violence Act, 2005](#) outlines the responsibilities of the protection officer, many of which involve the victim. These include: protecting the victim from domestic violence and its recurrence; helping the victim make complaints or an application for orders of relief, including for compensation; preparing a safety plan; facilitating free legal aid and medical aid; maintaining a list of local legal, medical and service providers; coordinate shelter for the victim and assist with transportation; communicate with service providers and liaise between the victim, police and service providers; maintain records, and; provide assistance with child custody and regaining personal property. It also calls upon protection officers to assist with enforcement of the court orders, using the police to confiscate weapons, conduct visits at the victim's home, and file a report on assets as directed by the court. While commendable, these responsibilities are overly broad for protection officers. Lawmakers should re-frame such protections as a statement of victim's rights, and involve and assign specific responsibilities to police, protection officers, service providers and other relevant actors as appropriate. India's [Protection of Women from Domestic Violence Rules, 2006](#) and [Protection of Women from Domestic Violence Act, 2005](#) do not contain a specific section on victim's rights within the main text of the law, but append a form on aggrieved persons' rights. Article 8(ii) of the [Protection of Women from Domestic Violence Rules, 2006](#) requires the Protection Officer to provide the victim, in English or a local language, with "information on rights of aggrieved persons under the under the [Protection of Women from Domestic Violence Act, 2005](#)" through Form VI. This form describes the law, rights of the victim, legal remedies available and a section for listing local service providers.

Promising practice: The law of [Spain](#) mandates that disabled persons receive information about legal and support remedies "in a format that is accessible and understandable "(Article 18).

- Legislation should provide that the police must perform certain duties to support the rights of complainant/survivors. See the section below on [Duties of police](#). In particular, laws must direct police to pursue all cases of domestic violence, dowry-related violence, and murders and suicides of women and carry out a prompt and full investigation, in accordance with official guidelines, Laws should direct police to collect objective evidence, including physical evidence, carry out a comprehensive investigation not limited to relatives' statements, and ensure a postmortem examination in murder or suicides is carried out by a competent authority.

- Support services should include transport to shelters, emergency services, and other support programs for complainants/survivors and their families. Legislation should state that the victim's consent is required before being transported to a shelter. For example, the [Law on Preventing and Combating Violence in the Family \(2007\) of Moldova](#) (hereinafter law of Moldova) states that victims may be placed in emergency shelters upon the victim's request, and if the victim is a minor, with the consent of the minor's legal representative. (Article 14)
- Legislation should name an agency or agencies which are responsible for victim services and should clearly describe the responsibilities of the agency or agencies. Drafters should, in consultation with advocates and NGOs, establish minimum standards and criteria for these agencies. For example, India's [Protection of Women from Domestic Violence Rules, 2006](#) include Form VI for the registration as service providers under the domestic violence law. Service providers providing shelter, psychiatric counseling, family counseling, vocational training, medical assistance, public awareness, group counseling or other services may register. The form requires applicants to describe their services, infrastructure, facilities, and staff experience and backgrounds.
- Legislation should provide free and accessible legal aid to victims of dowry-related violence and deaths. Legal assistance should provide victims with information about their rights, and legal remedies, as well as legal advice related to inheritance, extortion, illegal evictions and recovering personal property.

CASE STUDY: The Bangladesh Legal Aid Services Act (2000) provides free legal aid to indigent persons, particularly impoverished women and victims of acid attacks. Obtaining legal assistance under the various bar associations, however, is challenging due to the complex process set forth in the act. (See: Salma Ali, [Legal Approaches, Reforms, Different Areas of Laws, Assessment of the Effectiveness of Particular Legal Framework/Provisions, Lesson Learned, Good Practices & Highlighted Promising Practices in Bangladesh](#), Expert Group Meeting, UN Division for the Advance of Women, 2009, p. 6) Drafters should ensure that legal aid is accessible to victims and not burdened by cumbersome procedures.

Promising Practice: A Rwandan association, Haguruka, has organized training sessions for hundreds of paralegals who can educate and guide women on their rights regarding property and other issues. Drafters may wish to consider providing plans to educate women and men on women's human rights and the available recourses where such rights have been violated. See Catherine Newbury & Hannah Baldwin, *Confronting the Aftermath of Conflict: Women's Organizations in Postgenocide Rwanda*, in *Women and Civil War: Impact, Organizations and Action* 97, 108-08 (Krishna Kumar, ed., 2001).

- Legislation should require that the court administration system that handles cases of domestic violence maintain a staff which will provide assistance to domestic and dowry-related violence victims. (See: [Family Violence: A Model State Code](#))

Promising practices:

The law of [Brazil](#) calls for the creation of Courts of Domestic and Family Violence against Women, which should rely on a “multidisciplinary assistance team made up of professionals specializing in the psychosocial, legal and health areas.” This team is then to provide expert advice to judges, the Prosecutor’s Office and the Public Defense. (Articles 29, 30)

[Spain’s](#) law, which includes specialized Violence against Women courts wherein all employees from judges to court clerks must receive training on issues of gender violence and which focuses on “the vulnerability of victims.” (Article 47) [NOTE: The translators highlighted that the spanish actually refers to the ‘disability of victims, not vulnerability’- consider how to reword given this difference]

- Legislation should provide for economic assistance to complainant/survivors. Economic independence is a necessity for complainant/survivors to escape situations of violence. Legislation should provide for both short-term and longer-term economic and employment assistance. Laws should establish women’s legal right to the dowry by automatically placing legal title and ownership of any dowry in the bride or wife’s name. Laws should also appoint an officer to aid women in obtaining their dowry and other personal property. Laws should also establish a mechanism to help implement claims for restitution or cash compensation.
- For example, the law of [Brazil](#) provides for assistance to complainant/survivors by a court determination of the complainant/survivor’s inclusion in federal, state, and municipal assistance programs, and assures the complainant/survivor priority status to receive a job transfer if the complainant/survivor is a civil servant, or guarantees his or her employment for up to 6 months if the complainant/survivor must leave his or her place of work. Article 9
- Legislation should also make provision that dowry given by the bride’s family to the married couple, while it may be shared and used by the household, is the property of and belongs to the bride. In the event of her death, laws should ensure that all dowry given will transfer to the woman’s children or to her parents if she has no children. Legislation should also provide for a civil claim for compensation, giving the victim the option of either suing for return of the dowry itself or cash compensation.

Promising practices:

[India's Dowry Prohibition Act](#) requires that dowry (as opposed to voluntary gifts) be transferred to the woman within three months of the wedding, acceptance of dowry or her turning 18 years of age. If the dowry is not given to the woman by the prescribed time period, the woman may file a complaint against them, resulting in a fine (5,000 to 10,000 rupees), imprisonment (6 months to two years), or both. Drafters should consider passing laws that automatically place legal title and ownership of any dowry in the bride or wife's name. In *Pratibha Rani v. Suraj Kumar*, AIR 1985 SC 628, the wife had received cash, gold, clothing and other items from her parents as dowry, but her in-laws evicted her with only three pieces of clothes and refused to return the other items. The Supreme Court found that joint enjoyment and use of dowry and presents by the household does not signify joint ownership and control over those items. With regard to dowry, any use or custody exercised by the husband or in-laws is done so as trustees, and such property belongs to the woman irrespective of its joint use.

The law of [Spain](#) contains a comprehensive system of aid to victims: employment rights in Article 21, economic subsidies in Article 27, and priority access to subsidized housing in Article 28.

See: the [UN Model Framework](#), which outlines a “statement of victim’s rights,” and [Victim Protection, Support and Assistance](#), StopVAW, The Advocates for Human Rights.

Other important legislative provisions for assistance to complainant/survivors

- Legislation should require a free, 24-hour hotline that is accessible from anywhere in the country and staffed by persons trained in domestic violence issues. (See: [Crisis Centers and Hotlines](#), StopVAW, The Advocates for Human Rights) For example, the [Bangladesh National Woman Lawyers Association](#) provides a hotline and email address for women to contact for help.
- Legislation should mandate a shelter/safe space for every 10,000 members of the population, located in both rural and urban areas, which can accommodate complainants/survivors and their children for emergency stays and which will help them to find a refuge for longer stays. (See: [UN Handbook](#), 3.6.1; and [Shelters and Safehouses](#), StopVAW, The Advocates for Human Rights)
- Legislation should require long-term housing assistance for complainant/survivors as they work to attain economic independence from the perpetrator.
- Laws should also prohibit the perpetrator from dispossessing or illegally evicting the wife from the home.

Promising Practices:

Article 19(1) of [India's Protection of Women from Domestic Violence Act, 2005](#) authorizes the magistrate to restrain the respondent from “dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household.” (Article 19(1)(a)). Article 19(1)(f) authorizes the magistrate to direct a respondent to “secure same level of alternative accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.” Notably, while Article 19(1)(b) authorizes the magistrate to order the respondent to leave the household, the article states that this order may not be passed against a woman.

[Title VI of the Violence Against Women Act \(Reauthorized in 2005\)](#), United States (hereinafter VAWA, USA) provides that a complainant/survivor cannot be evicted from public housing because there have been incidents of domestic violence at her residence. Further, the complainant/survivor may not be denied public housing assistance due to domestic violence, her landlord may not claim that domestic violence incidents constitute “good cause” to terminate her lease, and the lease itself may be divided so that the joint tenant perpetrator may be evicted and the complainant/survivor tenant may retain possession of the lease. A complainant/survivor may also change jurisdictions within the public housing program to protect the health and safety of herself and her family, without violating the terms of the lease. This law protects complainant/survivors when one incident of domestic violence, dating violence, or stalking occurs against the complainant/survivor. However, if the landlord demonstrates that there is an actual or imminent threat to other tenants or to those employed at the property, then the complainant/survivor’s tenancy may be terminated. 42 U.S.C. §1437

- Legislation should mandate a crisis centre for every 50,000 population, with trained staff to provide support, legal advice, and crisis intervention counseling for all complainants/survivors, including specialized services for particular groups such as immigrants. (See: [UN Handbook](#), 3.6.1; and [Crisis Centers and Hotlines](#), StopVAW, The Advocates for Human Rights)
- Legislation should mandate access to free-of-charge health care for immediate injuries and long-term care including sexual and reproductive health care, emergency contraception and HIV prophylaxis in cases of rape, and burn-related injuries. This health care should be accessible to all, including minors and without requiring the consent of any third party.

For example, the law of [Brazil](#) contains the following provision:

The assistance to the woman in a situation of domestic and family violence will include access to benefits resulting from scientific and technological development, including emergency contraception services, prophylaxis of Sexually Transmitted Diseases (STDs) and of the Acquired Immune-Deficiency Syndrome (AIDS) and other necessary and appropriate medical procedures in the cases of sexual violence. Chapter 2, Article 9, Paragraph 3

- Legislation should mandate protocols and training for health care providers, who may be the first responders to domestic violence. Careful documentation of a complainant/survivor's injuries will assist a complainant/survivor in obtaining redress through the legal system. In countries with mandatory reporting laws, legislation should require mandatory reporters to provide a full explanation of laws and policies to the survivor when a report is required.
- Laws should mandate medical officials to report any case of grievous bodily harm in cases they suspect are the result of fire, kerosene oil or other stove implement to the police. (See: [Good Practices in Legislation on "Harmful Practices" against Women](#), Report of the Expert Group Meeting, UN Division for the Advance of Women, 26 to 29 May 2009, Section 3.3.5.2)

Promising Practice: Section 31 of the law of [Philippines](#) requires health care providers, therapists, and counselors who know or suspect that abuse has occurred to record the victim's observations and the circumstances of the visit, properly document all physical, emotional, and psychological injuries, provide a free medical certificate concerning the exam, and to retain the medical records for the victim. They must also provide the victim with "immediate and adequate" notice of their rights and remedies under Philippine law, and the services which are available to them.

- The [Noor Al Hussein Foundation's Institute of Family Health](#) (IFH) has developed a "Training Manual for Private Health Care Providers in Management of Victims of Violence against Women." The manual provides information on detection, diagnosis, and referral of victims to support services. According to the IFH, the guide is the first of its kind in the region to be available in Arabic and is already being used by medical professionals at nine private hospitals in Jordan.

(See also: [Role of Health Care Providers](#), StopVAW, The Advocates for Human Rights; [Confidentiality and Support](#), StopVAW, The Advocates for Human Rights; [Screening and Referral](#), StopVAW, The Advocates for Human Rights; [Documentation and Reporting](#), StopVAW, The Advocates for Human Rights; and [Creating a Health Care Response](#), StopVAW, The Advocates for Human Rights)

- Aid, including shelter, clothing and food, should also be provided for the children of complainant/survivors. (See: [UN Handbook](#), 3.6.1)
- Legislation should include provisions which provide for restitution or compensation to the complainant/survivor either through the criminal proceedings or through a separate tort law. (See: [UN Handbook](#) 3.11.5) For example, in addition to requiring the perpetrator secure similar accommodation or pay rent for a domestic violence victim, the Indian domestic violence law also authorizes a magistrate to order the perpetrator to pay relief for harm suffered by the victim and any child, including loss of earnings, medical expenses, destruction or loss of property and maintenance (Article 20(1)).

- Claims for restitution of dowry or other property should not require that such dowry be registered. For example, India’s Protection of Women from Domestic Violence Rules, 2006 authorizes a Protection Officer, by Magistrate order, to restore possession of personal effects and the shared residence to the aggrieved person (Article 10(c)), as well as investigate and file a report on assets and bank accounts (Article 10(b)). The [Dowry Prohibition Act](#) establishes Dowry Prohibition Officers to prevent dowry exchanges and demands, collect evidence needed for prosecution of offenses under the act, and carry out additional tasks.
- The law of [Malaysia](#) states that a victim of domestic violence is entitled to compensation in the court’s discretion:

Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.

(2) The court hearing a claim for such compensation may take into account—

(a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered ;

(b) the cost of medical treatment for such injuries;

(c) any loss of earnings arising therefrom;

(d) the amount or value of the property taken or destroyed or damaged;

(e) necessary and reasonable expenses incurred by or on behalf of the victim when the victim is compelled to separate or be separated from the defendant due to the domestic violence, such as—

(i) lodging expenses to be contributed to a safe place or shelter;

(ii) transport and moving expenses;

(iii) the expenses required in setting up a separate household which, subject to subsection (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence, or alternative residence, as the case may be, for such period as the court considers just and reasonably necessary. (Part III,10)

- In legislation or compensation provisions, drafters should consider expanding the “damage to property or financial loss as a result of the domestic violence” to include financial loss as a result of extortion or dowry demands.

State agency to establish aid centres

- Legislation should mandate a state agency to establish aid centres and legislation should fund the services. For example, the law of [Georgia](#) states that the Ministry of Labour, Healthcare and Social Protection shall determine minimal standards for temporary shelters for victims and batterer intervention centres. Article 21.

CASE STUDY: India's domestic violence law requires service providers (legal, medical, financial, or other) to register with the government, which authorizes them to document domestic violence incidents, facilitate a medical examination of the victim, and find shelter for the victim. India's Protection of Women from Domestic Violence Rules, 2006 contains a section on registration of service providers (Article 10). Any shelter seeking registration to be listed on Form IV "Information on rights of aggrieved persons under the Protection of Women from Domestic Violence Act, 2005" must pass a government inspection that verifying maximum capacity, adequate security, and an operational telephone or other communication media for the residents (Article 11(c)). Likewise, the government requires that any registrant for medical, counseling or vocational training meets the standards set forth by the relevant regulations. Laws should also ensure that registrants meets standards for preserving confidentiality, for example, by not disclosing information about shelter residents to anyone and restricting access to resident files. (See: [Shelters and Safehouses](#), StopVAW)

For example, in Article 6, the law of [Albania](#) describes the responsibilities of the Ministry of Labour, Social Affairs and Equal Opportunities as follows:

1. *The lead responsible authority has the following duties:*
 - a. *To develop and implement national strategies and programmes to offer protection and care to the victims of domestic violence;*
 - b. *To finance and co-finance projects designed for the protection and consolidation of family and for the care of victims of domestic violence;*
 - c. *To assist the set up of support structures and all of the necessary infrastructure to support and fulfill all the needs of the persons subject to domestic violence, including financial assistance as well as social and health services pursuant to the law;*
 - ç. *To organise training sessions on domestic violence with social service employees at any local government unit, police structures and employees of NPOs licensed to offer social services;*
 - d. *To maintain statistical data on the level of domestic violence;*
 - dh. *To support and supervise the set up of rehabilitation centres for domestic violence victims;*
 - e. *To support and supervise the set up of rehabilitation centres for the perpetrators of domestic violence;*
 - ë. *To license NPOs that will provide social services to victims and perpetrators.*
- Accreditation standards for assistance centres should be developed in consultation with NGOs and advocates working directly with complainants/survivors.

Promising practice: The [Bundesgesetz zum Schutz vor Gewalt in der Familie \(1996\) of Austria](#) (hereinafter law of Austria), where intervention centres are established and financed by government Ministry but run by women's non-governmental organizations. These organizations have the depth of knowledge and experience required to provide sensitive and comprehensive support to complainants/survivors and their dependents.
(See: [UN Model Framework](#), VII B)

CASE STUDY: [The Power to Change](#), a resource to help victims of domestic violence through support groups was created by women's rights advocates in Britain, Estonia, Hungary, Italy, and Portugal. The manual outlines a program model for creating self-help and support groups for women who have been in abusive relationships. The resource provides detailed information on how to establish such support groups by including checklists and outlining the responsibilities of facilitators, who play a key role in ensuring that the groups are safe, supportive, and inclusive.

The guide was created after two years of work by women's rights organizations throughout Europe and has been tested through consultation with practitioners and service users across the five countries. It is available in five languages. Building upon the experience and expertise of the involved organizations, [The Power to Change](#) is intended to be used as a practical tool for women's rights groups and existing specialist services for victims of domestic and sexual violence, as well as more informal self-help groups and domestic violence experts working in other organizations, such as health and social care. The organizations are: [Women's Aid](#) in United Kingdom, [NANE](#) in Hungary, [Associazione Artemisia](#) in Italy, [MTÜ Naiste Varjupaik](#) in Estonia and [Associacao de Mulheres Contra a Violencia](#) in Portugal. The guide was funded by the European Commission's [Daphne](#) initiative.

(See: [Women's Aid](#), "[Guide to Running Support Groups](#)" (24 November 2008); [Women's UN Report Network](#), "[Guide for Support Groups with Victims & Survivors of Domestic Violence](#)" (25 September 2009))

Confidentiality for complainant/survivors

The law should prohibit the disclosure of information about specific cases of domestic and dowry-related violence to government agencies without the fully informed consent of a complainant/survivor, who has had the opportunity to receive advice from an advocate, unless the information is devoid of identifying markers.

For example, the law of [Philippines](#) states:

Confidentiality. – All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential and all public officers and employees and public or private clinics to hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court. Section 44

Advocates

- Legislation should ensure that complainants/survivors have access to advocates who will be present and advise them through the legal process, including filing for orders of protection, accompanying them to court, and filing for restitution or compensation available by statute. Legislation should provide that these advocates must be trained in counseling, in domestic violence and dowry-related violence issues, and in the law and practice of their country. Trainings should be standardized to ensure a uniform response. Laws must provide these advocates with the infrastructural support to effectively carry out their work. (See: [Women's Human Rights Training](#), StopVAW, The Advocates for Human Rights)
- Advocates' roles in enforcing protection orders should focus on providing the complainant/survivor with information should they choose to relocate; ensure they have copies of the protection order; work with other civil and criminal justice professionals and community members to promote effective enforcement of protection orders, according to the wishes and needs of survivors; provide help to survivors during the enforcement process, (e.g. accompanying them to retrieve their possessions or arranging for a police escort; work with police to enforce protection orders issued locally or in another jurisdiction; work with courts to strengthen victim safety and ensure perpetrator compliance with the order) and; work with the community to improve enforcement (e.g. helping complainant/survivors discuss enforcement of protection orders with school personnel as it related to their children).
 - See: [A Guide for Effective Issuance & Enforcement of Protection Orders](#), National Council of Family and Juvenile Court Judges.
- Legislation should reflect the importance of the confidentiality of the relationship between an advocate and a complainant/survivor. (See: Confidentiality for complainant/survivors. For example, the law of [Georgia](#) states that "*The information on state of physical and psychological status of the victim shall be confidential and its disclosure shall be permitted only in cases provided by law.*" Art. 19)

(See: Fuller, Rana SA, "[The Importance of Confidentiality Between Domestic Violence Advocates and Domestic Violence Victims](#)," StopVAW, The Advocates for Human Rights)

- For information on advocate/complainant/survivor privilege, see [Family Violence: A Model State Code](#), Sec. 216 and [Advocacy Guidelines](#), StopVAW, The Advocates for Human Rights.
- Also, legislation should state that the role of advocates is not to mediate between the parties or facilitate reconciliation, but to provide the complainant/survivor with information about her legal rights and remedies and assistance. (See: [Mediation](#), StopVAW, The Advocates for Human Rights)

For more on the relationship of advocates and complainant/survivors see: Davies, Jill, "[When Battered Women Stay...Advocacy Beyond Leaving](#)" (2008); and [Uniform Protocol for the Management of Victims, Survivors, and Witnesses of Domestic Violence and Sexual Offences](#).

CASE STUDY: India's domestic violence law provides for the appointment of Protection Officers, which perform a role similar to that of advocates. The Protection Officer drafts and submits an incident report to the police and magistrate, as well as assists the victim in applying for a protection order if she so desires (Section 9). In addition, such Protection Officers ensure the victim is provided with legal aid, maintains a list of service providers, and facilitates medical examinations if the victim is injured. Specific to the dowry context, such officers are to help "Restore the possession of the personal effects including gifts and jewelry of the aggrieved person and the shared household to the aggrieved person" (Rule 10). Because the law is silent on pre-litigation counseling, some Protection Officers have taken on the role of counselor for women at this stage; laws should direct that only qualified professionals provide counseling and that Protection Officers without such qualifications should provide referrals. Also, the law confers responsibility on the Protection Officer to enforce orders as directed by the court; laws should segregate and place responsibility for enforcing orders on police and prosecutors, as well. The Lawyers Collective has issued a monitoring report on India's law and made several recommendations, including: ensuring the officers are full-time personnel, allocating sufficient infrastructure and personnel; establish reporting requirement protocols for officers; prioritizing the appointment of people with legal or social work backgrounds, as well as making available legal services to the officers; making available a list of all service providers in the area, and; appointing an overarching coordinator of protection officers. (See: [Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act](#), 2005, Lawyer Collective, 2008, p. 72)

Coordinated community response and implementation of laws

Coordinated community response

- Coordinated community response is an intervention strategy developed by the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota, USA. This strategy, often called the "Duluth model," is a "system of networks, agreements, processes and applied principles created by the local shelter movement, criminal justice agencies, and human service programs that were developed in a small northern Minnesota city over a fifteen year period. It is still a project in the making." *From:* Ellen Pence & Martha McMahon, [A Coordinated Community Response to Domestic Violence](#) (1999), The National Training Project, Duluth, Minnesota. Given the various health, legal, economic and social needs of dowry-related violence victims, coordinating the response across sectors will promote protection of survivors/complainants.
- Although there is no one model that will work in every context, the model used by DAIP in Duluth is one of the most successful coordinated community response projects and has been adapted for use in communities in many different parts of the world. See: [Adapting the Duluth Model](#), StopVAW, The Advocates for Human Rights; and [Coordinated Community Response](#), StopVAW, The Advocates for Human Rights.

- Legislation should include provisions that require agency collaboration and communication in addressing dowry-related and domestic violence. NGO advocates who directly serve victims should have leadership roles in such collaborative efforts. When police, judicial officials, NGOs that provide direct service to victims of violence, and medical providers coordinate their efforts to protect women of dowry-related violence and hold abusers accountable, these efforts are more successful. Coordination helps to ensure that the system works faster and better for victims; that victims are protected and receive the services they need; and that abusers are held accountable and cease their abusive behavior.

(See: [Council of Europe General Recommendation Rec\(2002\)5](#), para. 27; StopVAW, The Advocates for Human Rights: [Benefits of Coordination](#); [Goals and Strategies of Intervention](#); and [Community Response Participants](#); See also: [Implementation of Laws](#))

Promising Practice: Bangladesh's Multi-Sectoral Programme on Violence Against Women, a joint collaboration between the Bangladesh and Danish governments, is housed under the Ministry of Women and Children Affairs. As part of the program, it coordinates a [one-stop crisis centre](#) for women victims of violence in hospitals. These centres provide: victims with health care, police assistance, social services, legal assistance, counseling, shelter aid, and medico-legal examinations.

Many nations have provisions which mandate cooperation by state agencies.

For example, one of the objectives of [Albania's](#) law is:

a. To set up a coordinated network of responsible authorities for protection, support and rehabilitation of victims, mitigation of consequences and prevention of domestic violence[.]

CASE STUDY: Pakistan's Domestic Violence Bill 2009, which incorporates dowry into the definition of domestic violence (Article 4) establishes a Protection Team. The Protection Team is to be composed of a female Union Councillor, a female police officer and male officer not below the rank of Assistant Sub-Inspector. The Protection Team is in charge assisting victims of domestic violence, including entering the place where domestic violence is alleged until victim protection can be assured; assisting the victim in obtaining medical treatment, relocating to a safe place with her consent, preparing an application for a protection order, and; documenting and maintaining a record of the domestic violence incidents and applications, protection orders and service providers (Article 6). When providing for a protection team, lawmakers should ensure that the unit includes or collaborates with advocates, NGO representatives and social service providers. Laws should also promote coordination among and consultation with health care providers, child protection agencies, the media, clergy and religious leaders, employers, businesses, poverty organizations, professional associations (e.g., of doctors, lawyers), and government agencies.

[Spain's](#) law states that *“The female victims of gender violence are entitled to receive care, crisis, support and refuge, and integrated recovery services...Such services will act in coordination with each other and in collaboration with the Police, Violence against Women Judges, the health services, and the institutions responsible for providing victims with legal counsel, in the corresponding geographical zone.”* Art. 19

Promising practices:

[Spain's](#) law also provides for funding and evaluation of these coordination procedures. Article 19

In India, the Anna Nagar All Women Police Station establishes an NGO presence to offer services to victims. Police received an orientation, and a press release of crisis numbers in English and Tamil is sent to local newspapers. A co-coordinator available at the station provides information on NGO support services, and three crisis counselors available at the police station provide counseling. There is also a 24-hour crisis line. Police can request an NGO representative to accompany them to home calls. The coordinator and police inspector have together mapped out cases for follow-up consultation, as well as coordinate case documentation and management. The coordinator and a female police officer have conducted outreach to distribute crisis numbers to homes. (See: Prasanna Poornachandra, [A Domestic Violence Coordinated Project - Going Beyond Victim Support](#), 2006, p. 115)

Implementation of a coordinated community response

- Coordinated community response programs work to create a network of support for victims and their families that is both available and accessible. They also use the full extent of the community's legal system to protect victims, hold perpetrators accountable, and reinforce the community's intolerance of violence against women.
- Inter-agency coordination is a critical component of a coordinated community response response. A single case of domestic or dowry-related violence, for example, may involve multiple laws and regulations, various levels of government and numerous intervening agencies and groups. In the course of a day, that single case may be in the hands of multiple practitioners throughout the civil and criminal justice systems as well as service agencies. Coordination of responses and accountability of those practitioners can significantly increase the effective implementation of new laws created to protect victims, prosecute offenders, and prevent further violence. Interagency coordination involves:
 - Creating a common vision and action plan
 - Enabling communication and linkages between agencies
 - Providing clear, written mandates to each responsible agency
 - Establishing an entity to monitor implementation of the coordinated action

(See: [Domestic Violence: Legislation and its Implementation](#), 40-45, UNIFEM (2009))

- Legislation should include the following strategies in order to achieve a coordinated community response:
 - Assist the complainant/survivor with retrieving her personal belongings and dowry;
 - Assist the complainant/survivor with claims against illegal evictions and/or dispossession of the marital residence.
 - Ensure safety of the survivor as the primary and central concern through an effective police response, emergency orders for protection and access to emergency shelter;
 - Mandate crisis intervention services (hotlines, legal advocacy, medical care, financial and housing assistance);
 - Include provisions for an effective and coordinated justice system response, such as an appropriate and timely police response, appropriate prosecutorial and judicial response, coordination of information between all legal actors, victim advocates, dowry and marriage registration bodies, and enforcement of orders for protection;
 - Provide for an appropriate response to the abuser, which consistently hold abusers accountable, including arrest and appropriate sanctions;
 - Provide for follow-up services for complainant/survivors such as counseling, support groups, services for children, abuser treatment services, assistance with employment, housing, health care and child care;
 - Mandate training of personnel in all systems;
 - Include provisions which mandate coordination and monitoring of interventions such as advisory committees or councils, court watch, data collection and reporting, and accountability systems.

See: [Goals and Strategies of Intervention](#), Stop VAW, The Advocates for Human Rights; Implementation of Laws on Violence against Women.

CASE STUDY: Engaging traditional leaders in combating domestic violence in Cameroon.

Gender-based violence in Cameroon is manifested by sexual violence, harmful practices, and domestic violence. Women in Cameroon experience physical and psychological domestic violence on a regular basis. This violence is the result of a belief in women's subordinate status, the shame involved in reporting the violence, and the lack of an effective state response to the violence. In 2007, a Cameroonian NGO, The Centre for Human Rights and Peace Advocacy (CHRAPA), sponsored by The Trust Fund in Support of Actions to Eliminate Violence Against Women, UNIFEM, began a multi-level project to address these concerns. The project consisted of: establishing a program of legal assistance to victims; educating the public and certain target groups such as police, women's group leaders, and traditional authorities; endeavoring to pass a draft law against gender-based violence; and carrying out a baseline survey in the project area in order to obtain statistics on VAW, including its forms, frequency, and perpetrators.

The project team employed a participatory management system which involved all of the stakeholders in planning their roles to execute the project. This created an informed and vested group of stakeholders who supported the goals of the project. Stakeholder involvement by one group in particular was found to create a positive outcome. A Network of Traditional Authorities, or *fons*, was formed. These area chiefs determined strategies to end gender-based violence in their area and implemented restitution for victims of gender-based violence. Project managers reported that these traditional authorities, who were once the custodians of violent practices against women, are now calling upon their communities to refrain from these practices. The *fons* have continued to hold traditional meetings to raise awareness, to monitor achievements, and to deal with cases of abuse. Violence against women is a regular agenda item at these traditional meetings, and CHRAPA keeps the *fons* up-to-date on issues of violence against women.

(See: Section on [Implementation of Laws](#))

Promising Practice: [Poland's "Safer Together"](#) program to implement its National Programme Against Domestic Violence. "Safer Together" calls for improving cooperation between organizations to assist victims and aims to develop a consistent system of procedures to exchange information among all entities involved in counteracting domestic violence.

The [UNODC Southern Africa](#) and the South Africa Department of Social Development created one-stop service centres for domestic violence victims and their children. These centres integrate government and community services to provide aid to victims and to promote prevention programs, including radio shows, school programs, and work with young male prison inmates. (See: ["Project Counters Domestic Violence in South Africa." UNODC Update No. 4 \(2005\)](#))

Batterers' intervention programs

- When legislation provides for educational or rehabilitative programs for violent offenders, or batterers' intervention programs, it must ensure that the safety of the complainant/survivor is paramount, and that such sentences are carefully monitored by the judge involved. (See: [Knowledge Module on Partnering with Men and Boys to Prevent Violence Against Women and Girls](#)) If a batterer is sentenced only to an intervention program, and his attendance or behavioral changes are not monitored, the implementation of the law on domestic and dowry-related violence will be seriously impaired. (See: [Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice](#), p. 53 [to be updated in early 2010]; and [Batterers' Intervention Programs](#), StopVAW, The Advocates for Human Rights)
- Legislation which allows batterers' intervention programs as an option for violent offenders must ensure that such programs do not replace sanctions for violations of orders for protection or for acts of violence. Such programs must be carefully regulated so as not to create excuses for offenders and so that survivors are not required to have contact with offenders. (See: [UN Handbook](#), 3.11.6; law of [Spain](#); and [Family Violence: A Model State Code](#) Sec 508)
- For example, the law of [Georgia](#) places the responsibility for rehabilitation centres for abusers with the a specific Ministry, and states that "*Such centres shall meet standards set by the Ministry of Labour, Healthcare and Social Protection for institutions of such kind and ensure temporary placement, psychological assistance and treatment of abusers.*" (Article 20)
For an example of detailed standards for program structure, accountability, curriculum and administrative guidelines, see: [Virginia Standards for Batterer Intervention Programs](#), for the state of Virginia, USA, last rev. 04/09.

Promising practice: A batterer's intervention program which is provided only where sufficient services to complainant/survivors are funded; and where the program is consistently supervised by victim advocates for risks to the safety of the complainant/survivor.

CASE STUDY: Mandated court compliance in batterer intervention programs affects program completion and re-arrest rates.

A study of the court review process for men referred to batterer intervention programs by the Domestic Violence Court in Pittsburgh, Pennsylvania, USA, found that strict standards for compliance and immediate consequences for non-compliance increased attendance at and completion of the batterer intervention program. The study also concluded that completion of the program, coupled with the mandatory court review for compliance, lowered recidivism.

At the time of the study, about 20-30% of men arrested on domestic violence charges in Pittsburgh were referred to batterer intervention programs, but records indicated that many men did not, in fact, report to the program, and of those who did, nearly one-half failed to complete the program. For this study, the men who were referred to batterer counseling had to reappear in court in 30 days to verify their participation in the batterer intervention program, and again after 60 days to verify that they had completed the program. If the court did not receive evidence of compliance, or if evidence of non-compliance was received, a warrant for the arrest of the batterer was issued.

When there were immediate and sure consequences to non-compliance, the number of men who did not complete the program dropped from one-half to one-third. And, those who completed the program were half as likely to be re-arrested for assault as those not referred to the program.

(See: Gondolf, Edward W., [The Impact of Mandatory Court Review on Batterer Program Compliance: An evaluation of the Pittsburgh Municipal Courts and Domestic Abuse Counseling Center](#), 1998)

Implementation of domestic violence and dowry-related violence laws

- A number of provisions are vital to the implementation of a new domestic violence and dowry related violence law and should be included in legislation. (See: Implementation of Laws on Violence against Women and Girls)
- Legislation should require regular training for police, judicial officials, service providers, Registrars, and protection units who implement the law. (See: [UN Handbook](#) 3.2.3; and [UN Model Framework](#) VII C, D, and E) Trainings should be standardized at the national level and created in consultation with or by advocates and NGOs working on domestic violence and dowry issues.

For example, see: law of [India](#):

The Central Government and every State Government, shall take all measures to insure that the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by [The Protection of Women From Domestic Violence Act]. Ch III, 11 (b)

For example, the Chittagong Port Authority in Bangladesh offers a course on [social awareness of dowry](#) for port officials. The one-day training addresses topics, such as:

- Origin of Dowry system.
- Dowry system - a deep rooted social custom which is a crime against humanity.
- Direct Victims of Dowry system.
- Dowry system - a menace in the society.
- The evils of Dowry system.
- Protest against Dowry system.
- Remedies of Dowry system:
 - Extension of Female Education.
 - Implementation of Laws promulgated by the Govt.
 - Role of media.
 - Alleviation of poverty is the precondition to the permanent solution of the dowry system.

Promising practice: The law of [Brazil](#) requires “permanent trainings” of law enforcement and judiciary officials not only on gender issues, but also on race and ethnicity issues. (Article 8)

- Legislation should name a state body as responsible for implementing the domestic and/or dowry-related violence law and a separate state body as responsible for monitoring the law. For specific recommendations, see [UN Handbook](#) 3.3; and the sections on [Implementation of Legislation on Violence against Women and Girls](#) and [Monitoring of Legislation on Violence against Women and Girls](#) in this Knowledge Asset.
- For example, the law of [Spain](#) provides for a State Observatory on Violence against Women to provide advice and analysis of gender violence matters, prepare reports and proposals for action, and supervise collaboration of the institutes involved. Article 30
- The law of [Guyana](#) names the Ministry of Labour, Human Services and Social Security responsible for public awareness and educational programs and for conducting studies and publishing reports on domestic violence in Guyana. Part IV 44.

- The laws of Pakistan and India name a protection officer to carry out many of these duties. Article 19 of Pakistan's draft [Domestic Violence \(Prevention and Protection\) Act, 2009](#) states that the Protection Officer is:
 - (a) to make a domestic incident report to the Protection Committee, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the Protection Committee within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in the that area;*
 - (b) to make an application in such form and in such manner as may be prescribed to the court, if the aggrieved person so desires, claiming relief for issuance of a protection order;*
 - (c) to ensure that the aggrieved person is provided legal aid;*
 - (d) to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the court;*
 - (e) to make available a safe place of residence, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person a shelter home to the Protection Committee;*
 - (f) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the Protection Committee having jurisdiction in the area where the domestic violence is alleged to have been taken place;*
 - (g) to ensure that the order for monetary relief under section 10 is complied with and executed in accordance with the procedure prescribed; and*
 - (h) to perform such other duties as may be prescribed.*

Promising Practice: Section 10 of the [National Commission for Women Act, 1990 \(Act No. 20 of 1990 of Govt. of India\)](#) establishes clear functions for the commission, including: reviewing legal protections for women and making recommendations for their effective implementation and amendments; receive and investigate complaints related to women's rights; initiate studies on discrimination against women and undertake research; fund impact litigation relating to women, and; issue reports to the government on laws and any matters related to women. The law also establishes a Complaints and Counseling Cell under the National Commission on Women to receive communications about women's human rights violations, non-implementation of laws, and non-compliance with decisions on various issues, including domestic violence and dowry. Positive aspects of its response protocol includes: expediting and monitoring police investigations, and establishing an [Inquiry Committee](#) to investigate, examine witnesses, collect evidence and submit a report with recommendations. Two committees have been established to look into separate incidents of dowry deaths.

- Legislation should state that the state body or bodies responsible for implementing the law must work in collaboration with NGOs that provide direct service to domestic violence and dowry-related violence victims, police, prosecutors, judges, the health sector, and the education sector, to develop regulations, protocols, guidelines, instructions, directives, and standards, including standardized forms, so that the legislation may be implemented in a comprehensive and timely manner. [UN Handbook](#) 3.2.7.
- For example, law of [Albania](#) delegates clear responsibilities and duties to its Ministries in the implementation of the law:

“Duties of other Responsible Authorities

1. Ministry of the Interior has the following duties:

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

2. Ministry of Health shall set up necessary structures to provide health care in domestic violence cases at the emergency units and at the health care centres in municipalities and communes, with a view to:

- a. Offer at any time medical and psychological help to domestic violence victims,*
- b. To carry out necessary examinations at any time at respective public health institutions,*
- c. To record domestic violence cases at the appropriate medical documentations, as approved by the Ministry of Health*
- ç. To provide the victim with the respective medical report*
- d. To guide and refer the victim to other support and protection domestic violence services*

3. Ministry of Justice has the following duties:

- a. To train the medico-legal experts in recognizing, diagnosing, evaluating and reporting on domestic violence and child abuse injuries;*
- b. To train the bailiffs on their duty to serve protection orders immediately and to ensure their implementation under Article 23 point 6 and to take appropriate action;*
- c. To budget for free legal assistance mandated under this act and ensure a sufficient number of trained lawyers to provide said assistance.*

4. Local authorities (municipalities, communes) have the following duties:

- a. To engage in setting up social services structures for domestic violence cases*

b. To install regional 24-hour toll free telephone line, which will then establish links to local units, police, medical emergency units and NPOs, thereby coordinating their actions

c. Establish social and rehabilitation centres for victims and perpetrators and coordinate efforts with existing ones, giving priority to specialised centres in respective fields. Article 7

Duties of all responsible authorities

1. Each of responsible authorities has the duty to set up the necessary structures and to nominate those individuals responsible for the implementation of this law. The Ministry of LSAEO shall supervise fulfilment of this obligation. Article 8

- Legislation should also require adequate and sustained funding for all aspects of implementation so that the law can be effective. (See: [UN Handbook](#) 3.2.2)

Promising practice: the law of [Philippines](#) requires funding to implement the law. Section 45.

CASE STUDY: India's [National Commission for Women Act, 1990 \(Act No. 20 of 1990 of Govt.of India\)](#) contains a provision on central government grants for the implementation of this act:

(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

- Importantly, laws should include a requirement that secondary legislation be quickly enacted within a specified time period.
- Legislation should require creation of a national plan or strategy on domestic and dowry-related violence. ([UN Handbook](#) 3.2.1) See: [The UN Secretary-General's database on violence against women](#) for the National Action Plans of many countries.
- Legislation should require data collection on dowry-related violence, dowry-related deaths and domestic violence reports which are disaggregated by sex, gender, race, age, ethnicity and other relevant characteristics. ([UN Handbook](#) 3.3.2) Research and studies should also investigate the practice of dowry giving/taking/abetting, causes and risk factors, the nature and extent of demands, community and family expectations, and consequences.

- Legislation should require data collection on specific aspects relating to the implementation of the new law, such as: number of orders for protection granted, denied, cancelled, appealed, etc. These should be kept and made available publicly. In addition, qualitative data about the effectiveness of orders for protection should be gathered on a regular basis from police, courts, relevant government ministries, counseling centers and shelters, and from complainant/survivors. Legislation should require that this data be compiled by the relevant government ministry and published on an annual basis. (See [UN Handbook 3.3.2](#); and section on [Monitoring of Laws on Violence Against Women and Girls](#).)
- Legislation should require public awareness programs on domestic violence and dowry-related violence. (See: law of [Spain](#); law of [India](#), Ch. III, para. 11; [UN Handbook 3.5.2](#); and [Council of Europe General Recommendation \(2002\)5](#), Appendix, paras. 6-13) Legislation should engage, collaborate with and provide funding to NGOs and advocates that conduct various public awareness campaigns on violence against women. For example, SACHET of Pakistan runs a [Fight against Dowry](#) campaign; Rozan carries out its [Munsalik campaign](#) to sensitize and train media on gender-sensitive reporting; Ain o Salish Kendra of Bangladesh has a [human rights awareness unit](#) that coordinates school theatrical and cultural groups with training on human rights, gender and acting; provides training on human rights and gender to students, teachers and theater groups; organizes study groups and debates, and; coordinates festivals and events.

Promising Practice: The village of Nilambur, India, has undertaken a campaign to become a [dowry-free village](#). The campaign began with a 3-day workshop bringing together religious leaders, youth and women to discuss the problem of dowry and pledge to not accept or give dowry. The campaign also fostered dialogue with religious leaders to gain their support in opposing dowry practices, as well as opened up discussions about the need to protect women's property rights. The campaign engaged Mahal committees, which often formalize marriages, in discussions to gain their support for the campaign. Public village meetings, with strong participation by women, discussed dowry, desertion and child marriages. The village launched the campaign, with parliamentary members, elected representatives, and religious leaders in attendance. Cultural events, celebrations, workshops, and theater performances followed. On June 13, 2009, official registration for a dowry-free panchayat by women and men, ages 14 to 30 years, began and registrants include their opinions about dowry, as well as the reasons behind divorce or desertion by women. People may continue to [register online](#) on the campaign's website. Ultimately, the plan is for registration to lead to vocational training for women whose husbands have left them and widows, career and marital counseling for youth, and vigilance committees for women victims of violence and discrimination, and gender desks in schools to address discrimination and violence. This campaign incorporates important elements: participation and involvement of women and youth, dialogue with and engagement of religious leaders, public awareness campaigns, discussions of root causes of violence against women, an open and ongoing commitment to the campaign by women and men, and empowerment programs for women.

- Legislation should require education on domestic violence, dowry-related violence and discrimination against women for all grade levels which includes information on relevant laws. (See: [Council of Europe General Recommendation \(2002\)5](#), Appendix, 14-16; [UN Handbook](#) 3.5.3; and the law of [Spain](#), which includes detailed provisions for inclusion of information on gender violence at all levels of its educational curricula, including training of teachers. Article 4, Article 7) See also Knowledge Module on Education (*forthcoming*)

For more detailed information on implementing laws, see the section on [Implementation of Laws](#).

Time limit between enacting and enforcing laws

The time between the enactment and enforcement of a new domestic violence and dowry-related violence law must be carefully calculated so that amendments and amendments which are necessary to the enforcement of the new law may be quickly enacted and promulgated. (See: [UN Handbook](#) 3.2.7)

For example, the law of [Albania](#) states that the Council of Ministers is to issue all of the necessary secondary legislation to the implementation of the domestic violence law within 3 months of its entry into force.

Criminal justice system response to dowry-related and domestic violence

Duties of police officers

- Legislation should state that police and other law enforcement officials are obligated to pursue all cases of domestic violence and dowry-related violence, including scrapes and burns from stove accidents, and injuries involving kerosene, regardless of the level of violence. Legislation should require police and other law enforcement officials to pursue cases of dowry-related violence that involve threats of violence or other harm that would result in injury, death, psychological harm, maldevelopment or deprivation of staples necessary for an adequate standard of living (adequate food, clothing and housing, but not material goods).
- Legislation should also state that police and other law enforcement officials are obligated to pursue any murders or suicides that appear suspicious or follow a history of dowry demands.

CASE STUDY: India's [Criminal Procedure Code](#) requires police to make an investigation wherever information is received that "a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence" (Article 174). The investigating officer is to write a report on the cause of death, describing injuries found on the body and what weapon or instrument may have been used to inflict such wounds. Article 174(3) requires the police officer to send the body to a qualified medical person for examination where:

- (i) the case involves suicide by a woman within seven years of her marriage; or*
- (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or*
- (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or*
- (iv) there is any doubt regarding the cause of death; or*
- (v) the police officer for any other reason considers it expedient so to do..."*

- Laws requiring police to transfer the bodies of apparent suicides for examination should not limit the number of years by which the suicide must occur. Laws should also mandate officers to transfer these bodies when there is evidence of a history of dowry demands from the spouse or spouse's relatives.
- Legislation should require the police to give domestic and dowry-related violence requests for help the same priority as other calls involving violence. (See: law of [Georgia](#). For information on assigning priority levels to domestic violence calls, see: [The St. Paul Blueprint for Safety](#), p. 21)
- Legislation should require the police to perform certain duties as part of the investigative process in requests for help in domestic or dowry-related violence cases, including interviewing parties separately, recording the complaint, filing a report, advising the complainant/survivor of her rights, and determining the existence and pattern of dowry demands and gift giving to the parties from their relatives. Laws should not assign police the role of mediation or counseling, but authorize them to make referrals to qualified advocates and service providers.

For example, the law of [Brazil](#) mandates a police protocol which includes a provision requiring police to determine the existence of prior complaints of violence against the aggressor:

*"... – command the identification of the aggressor and the addition of the aggressor's criminal record to the judicial proceedings, indicating the existence of arrest warrant or record of other police occurrences against him..."*Article 12, VI

- Legislation should specifically preclude the use of police warnings to violent offenders or offenders who harass a spouse or her relatives to obtain dowry. Warnings do not promote offender accountability or communicate a message of zero tolerance for violence.

- Legislation should require that police officials develop policies for implementation of domestic violence laws that provide specific directives to front-line law enforcement. For example, the complete and accurate documentation of domestic violence incidents through police reports is an essential component for offender accountability. (See: [The St. Paul Blueprint for Safety](#), p. 31)

Promising practice: The law of [Namibia](#), which requires the Inspector-General to issue specific directives on the duties of police officers, report to the responsible Minister on both the directives and the training provided to the police, and also to keep statistics from reports on domestic violence reports and to forward them to the relevant Minister. Part IV 26 and 27.

- Legislation should require police to conduct a full, thorough and objective investigation in dowry-related violence, domestic violence and suspicious murders or suicides. Also, legislation should mandate that officers investigate any stove burning case. (See: [Good Practices in Legislation on “Harmful Practices” against Women](#), UN DAW (2009), ¶ 3.3.5.2) Legislation should require officers to gather evidence using investigative procedures that minimize intrusion in the victims’ lives, maintain standards for the collection of the best evidence, take into account the unique needs of the victim, maintain respect for the victim’s dignity and integrity, and are in accordance with the rule of law. In dowry-related violence, dowry deaths, and suspicious murders or suicides, police should ensure investigation interviews are conducted with the victim’s relatives and include questions to determine the existence and pattern of dowry demands and gift giving. See: U.N. Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice in [UN General Assembly Resolution 52/86](#) (1997); [Text of the draft revised Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#) (2009).

See: Section on Evidence.

- Legislation should authorize police to record the dying declaration as admissible evidence in a dowry death. Legislation should establish standard guidelines for recording a dying declaration. For example, in *State v. Laxman Kumar*, AIR 1986 SC 250 (India), the investigating police officer recorded the dying declaration of a burned bride. The declaration lacked an explanation why the judge and doctor were unavailable to take the statement, and it lacked a signature by the victim and proof of incapacitation to sign. Given these factors, and the questionability of the victim’s fitness to make the declaration, it was not accepted into evidence. In *Dalip Singh v. State of Punjab*, AIR 1979 SC 1173, the Supreme Court stated that, while dying declarations recorded by police is less preferred to those recorded by a judge, each case must be looked at individually for the facts and circumstances. In *State of Punjab v. Amarjit Singh*, where the assistant sub-inspector recorded the victim’s declaration, the court found that the dying

declaration could be accepted into evidence, because: the declaration was found to be free from influence; the inspector was found to have correctly recorded the declaration; the declaration was read to the victim; the victim signed the declaration using her thumb imprint, and; the doctor certified the victim was capable of making a statement and signed it, as well. AIR 1988 SC 2013. See: V.K. Dewan, *Law Relating to Offences against Women*, 2nd Ed., Orient Law House: 2000, p. 138-39. Indian caselaw has resulted in several core standards on dying declarations (citations omitted):

- Corroboration of a dying declaration is not required for admissibility;
- Conviction can be based on a dying declaration without corroboration should the court find it is true and voluntary;
- The court must review the declaration to ensure it is not influenced by instruction or prompts, and the victim was in a fit state to make the statement and able to identify the perpetrators;
- Corroboration should be required for a suspicious dying declaration before proceeding further with it;
- Rejection of a dying declaration is permissible where the victim was unconscious and unable to make a declaration;
- Lack of details of the offense does not in and of itself disqualify a dying declaration;
- Brevity of a declaration is not a reason for rejection of it; rather, the short length of a declaration can be an indication of truth;
- An eyewitness account that the victim was in a fit and conscious state to make the declaration may prevail over a medical opinion to that point.

See: V.K. Dewan, *Law Relating to Offences against Women*, 2nd Ed., Orient Law House: 2000, p. 136-37.

Promising Practices:

In *Anthony Gonsalves v. The State*, 1998 P Cr. L J 489 [Karachi] ANTHONY GONSALVES, the Pakistani appellate court heard the case of a husband who burned his wife. Upon arriving at the hospital, the officer-on-duty obtained verification from the doctor that the victim was in a fit state to make a declaration. He recorded the victim's statement verbatim, obtained her signature, and subsequently filed it as the first information report (FIR) under Article 154 "Information in Cognizable Cases" of the [Code of Criminal Procedure](#), which states "information relating to the, commission of a cognizable offence if given orally to an officer incharge of a police station, shall reduced to writing by him or under his direction and then read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf: The defendant was convicted and sentenced to life imprisonment." The court stated that:

"the statement given by deceased wife of the accused in the hospital to [the officer-on-duty], stands amply proved by proper evidence before the Trial Court in which she very clearly implicated the accused and she made it clear that she was set on fire by her husband on account of the quarrel....."

"In my view, the accused having failed to challenge the statement of P.W.(prosecution witness) [the officer-on-duty], having failed to deny the signatures of [the victim] on the statement recorded by [the officer-on-duty] and produced as Exhibit 29, the Trial Court, proved the fact that [the victim] had given such statement in presence of [the officer-on-duty]. This according to me amounted to a "dying declaration" of the deceased as from all the circumstances, it is clear that victim lady was in a precarious condition in the hospital after receiving burn injuries and the police officer had also found her in such condition that he found it necessary to seek the opinion of doctor and the doctor gave the opinion in writing and, thereafter, her statement was recorded."

India's [Criminal Procedure Code](#) enables a police officer to continue further investigation when new facts, whether oral or documentary evidence, arise after the Magistrate has received a report on the crime. In *K. Uma Maheshwari v. Addl. Director General of Police, CID*, I(2003) DMC 348, the court held that police officers in charge of the police station hold express power to further investigate given new evidence. Such further investigation constitutes a continued investigation rather than a re-investigation.

- Legislators should ensure that specialized police units are created for the investigation and prosecution of domestic violence, dowry-related violence and dowry death cases. Laws should provide for standardized training for these police units on these issues, the law and women’s human rights. These units should be women-only units so that complainant/survivors are more likely to seek assistance.

(See [Spain’s](#) law; and the [Handbook on Effective police responses to violence against women](#) (2010) p. 39)

Promising practice: The law of [Zimbabwe](#) provides that “where a complainant so desires, the statement of the nature of the domestic violence shall be taken by a police officer of the same sex as that of the complainant.” Section 5

CASE STUDY: India established approximately 300 all-women police stations to receive complaints about domestic violence and dowry-related violence (as of 2005). These stations have been instrumental in increasing public awareness, encouraging women to come forward and documenting complaints, but there have been concerns with regard to police training and response. Drafters should ensure that all police undergo training on domestic violence and dowry-related violence and file a police report for documentation. (See: [Improving Law Enforcement Investigation Techniques \(Word | PDF\)](#)) Similarly, Brazil also has all-women police stations. Also, the State Women’s Commission in India recommended that every police station house counseling cells for addressing domestic violence under Indian Penal Code §498A on physical and mental cruelty to a woman by her husband and in-laws. The Commission recommends counseling couples, but it is important that counselors see and advise women without their spouse if they choose. Counselors should also avoid advocating mediation or reconciliation, and instead focus on providing women with information on the law, its remedies and the options and resources available to them. (See: Section 498A-Used or Misused? SanLaap and Centre for Social Research, p. 52 (2005))

- Legislation should require police to develop a safety plan for complainant/survivors. See: [Handbook on Effective police responses to violence against women](#) (2010), p. 74-75.
- Legislation should provide sanctions for police who fail to implement the provisions, accept bribes from any parties, or otherwise engage in corruption. (See: law of [Albania](#), Article 8) Drafters must ensure that laws and guidelines that govern police conduct are in place. In some cases, the problems with police response lie not in the legislation but rather in police misconduct or obstruction of justice. The [Code of Conduct for Law Enforcement Officials](#) proscribes corruption and states that it includes the “commission or omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted” (Art. 7, Commentary (b)). Laws should

provide a mechanism to receive communications about police failure to implement these provisions. The drafters should work closely with civil society to ensure effective civilian and independent oversight of the police and to ensure the availability of procedures complaints about police misconduct to an independent investigatory body.

Promising Practice: Bangladesh’s Prevention of Oppression Against Women and Children Act 2000, which punishes dowry deaths, addresses police incompetence and misconduct in the investigation of crimes against women and children. Article 18 states:

“v. If, after the completion of a trial, it appears before the Tribunal that, the officer investigating an offence under this Act, has submitted the report without, collecting or considering any evidence which would be helpful in proving the offence, for the purpose of keeping away any person from the liability of the offence, or voluntary negligence in the investigation, or by producing a person as witness who should be produced as the accused, or without examining an important witness, the Tribunal can direct the authority under which he is, to take proper legal action against the investigating officer, regarding his act or negligence as incompetence or in place, mis-conduct.

vi. The Tribunal may, on an application or on the basis of any information, direct the concerning authority to appoint another officer in place of the officer investigating the offence.”

- The [UN Model Framework](#) provides a detailed list of police duties within the context of complainant/survivor rights. III A and a list of minimum requirements for a police report in paragraph 23.
- The US Model Code recommends important provisions for the duties of a police officer, including confiscating any weapon or acids involved, assisting the complainant in removing personal effects, and “taking the action necessary to provide for the safety of the victim and any family or household member.” (See: [Family Violence: A Model State Code](#), Sec 204; see also: [Vision, Innovation and Professionalism in Policing Violence Against Women and Children](#) (2003), a Council of Europe training book for police)

See [UN Handbook](#), 3.8.1.

Promising practice: The law of [Brazil](#) also requires the police to keep the complainant/survivor informed “of the procedural acts related to the aggressor, especially those related to entry and exit from prison...” Article 21.

CASE STUDY: Pakistan's draft domestic violence bill establishes a Protection Committee, composed of one male or female police officer at the rank of sub-divisional officer, a female SHO and two female councilors from the Tehsil Council. The Protection Committee may file an application for a protection order if the victim so desires, as well as obtain the assistance of any person or authority (Article 16). The committee also is to:

- (a) inform the aggrieved person of her or his rights provided under this Act or any other law for the time being in force and the remedies and the help that may be provided;*
- (b) assist the aggrieved person in obtaining any medical treatment necessitated due to the domestic violence;*
- (c) if necessary, and with the consent of the aggrieved person, assist the aggrieved person in relocating to a safer place acceptable to the aggrieved person, which may include the house of any relative or family friend or other safe place, if any, established by a service provider;*
- (d) assist the aggrieved person in the preparation of and filing of any application or report under this Act, the Code or any other law for the time being in force;*
- (e) file an application for a protection order, if so desired by the aggrieved person;*
- (f) coordinate with Family Conciliatory Committee in performing its duties; and*
- (g) keep official record of the incidents of domestic violence in its area of jurisdiction, whether on the basis of information received or suo moto inquiry, irrespective of whether or not action is taken under this Act. Such record shall include:
 - (i) the first information received about the incident of domestic violence;*
 - (ii) the assistance, if any, offered or provided by the Protection Committee to the aggrieved person;*
 - (iii) where applicable the reason for not taking action under this Act when an incident was brought to the notice of the Protection Committee;*
 - (iv) where applicable, the reason for the aggrieved persons refusal to take assistance from the Protection Committee;*
 - (v) the names and contact details of the service provider, if any, from whom the aggrieved person sought help;*
 - (vi) maintenance of the record of applications, protection orders and the service providers operating in the area of jurisdiction; and*
 - (vii) perform any other duties that may be assigned to the Protection Committee under this Act or the rules made there under. (Article 15).**

CASE STUDY: The [Duluth Police Pocket Card](#) is a laminated pocket card which was developed by police in Duluth, Minnesota, with protocol to document domestic violence incidents. Policymakers may wish to adapt this card to address the dynamics of dowry-related violence and deaths. For example, police should interview all parties and witnesses, as well as the victim's family members, and police should document the history of any dowry, dowry demands, and gifts from the victim's family members to the offender or offender's relatives (¶ 4 of the pocket card). Police should also document any history or pattern of dowry demands between the parties and their families (¶ 11 of the pocket card). Police should also pose risk questions to the victim's relatives where there is a history or pattern of dowry demands and gifts to the offender or his family. When documenting history of prior domestic abuse, police should also ask about and document any stove accidents or burn accidents.

Legislation should require the police to inform the complainant/survivor of her rights and options under the law. For example, the law of [India](#) requires a police officer to inform the victim of important rights:

5. Duties of police officers, service providers and Magistrate.-A police officer, Protection

Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence. Ch. III, 5.

Promising practices:

[Family Violence: A Model State Code](#), Section 204, describes a comprehensive written notice that police should be required to give to a complainant/survivor for later review. The Commentary to the Model State Code notes that “An officer may be the first to inform a victim that there are legal and community resources available to assist him or her. Written notice is required because a victim may not be able to recall the particulars of such detailed information given verbally, particularly because the information is transmitted at a time of crisis and turmoil. This written menu of options...permits a victim to study and consider these options after the crisis.”

The notice describes the options which a victim has: filing criminal charges, seeking an order for protection, being taken to safety, obtaining counseling, etc. The notice contains a detailed list of the optional contents for an order for protection. This would be of great assistance to a complainant/survivor who may not be familiar with the purpose of an order for protection. When a complainant/survivor is given a written notice and description of these options, it enables her to consider her options and to decide what is best for her safety and for the safety of her family.

(See: [Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices](#), UNIFEM, June 2009, which states that “Information on rights empowers complainants in negotiating settlements and also allows them to make informed decisions on the legal options that they may want to pursue.” page 22)

India’s domestic violence law rules require Protection Officers to provide a victim with a standard information form available in English or a local language. The form describes the different types of violence (physical, sexual, verbal/emotional, economic), the applicable laws and the forms of relief available to her.

Ellen Pence, an expert on the Coordinated Community Response and many other aspects of domestic violence law and policy, recommends that police be trained to expect to see families in conflict numerous times, and to expect that a complainant/survivor may not accept their offer of help the first, second, or even third time. Police must be trained to respect the complainant/survivor’s wishes, and to assist her as she requests. (See: [The Blueprint for Safety - An Interagency Response to Domestic Violence Crimes](#) (Generic Statewide Version), St. Paul Blueprint)

See: Council of Europe, [The Protection of Women against Violence Recommendation Rec\(2002\)5](#) #29.

Lethality or risk assessments

Legislation should mandate that police investigate the level of risk to domestic violence victims in each case of domestic or dowry-related violence. Police should take into account threats from the perpetrator and his family members against the victim and her family members; the presence of weapons or acid, and; previous stove or burn accidents suffered by the victim. A history of dowry demands—whether satisfied or not—should be a part of any lethality or risk assessment. (See: [Case Study on Duluth Pocket Card](#). For additional risk assessment factors, see: [Assessing Risk Factors for Intimate Partner Homicide](#) (2003)) Other agencies of the criminal justice system, including prosecutors and judges, should also assess the level of risk to victims. (See section on [Lethality or risk assessments](#) below in [Criminal Law Provisions](#) and the sections on [Duties of prosecutors](#) and [Duties of judiciary](#). See: [Assessing Lethal and Extremely Dangerous Behavior](#) ([Word](#) | [PDF](#)))

Mediation or assisted alternative dispute resolution

Legislation should specifically preclude police from offering mediation or assisted alternative dispute resolution services to parties. Police should not attempt to improve relations in the family by offering these services or by mediating a dispute. See: [UN Handbook](#) 3.9.1. See section under [Duties of judiciary](#) on [Mediation or assisted alternative dispute resolution](#). While there has been some research indicating that mediation may be useful in reducing dowry demands, mediation should never be used in dowry cases where there is violence or threats of violence. Mediation presumes that both parties are on equal standing; in domestic violence cases, however, the offender(s) wields power and control over the victim and her family; the victim may also be fearful of stating her concerns in the presence of the offender. (See: [Mediation](#), Stop VAW, the Advocates for Human Rights)

Determining the predominant aggressor

- Legislation should require the police to evaluate each claim of violence separately in situations where both parties claim violence. The police must look beyond the visual evidence and consider the context of the act of violence by identifying controlling behavior in the predominant aggressor and fear in the victim. Police should also realize additional or other predominant aggressors may not reside in the marital home, such as a spouse's relatives who inflict or threaten violence against the victim.
- Police must be able to recognize the [tactics of power and control](#). They must consider such issues as: the severity of injuries inflicted by both parties, the difference in size and weight of the parties, the demeanor of the parties, any prior complaints of violence, claims of self-defense and the likelihood of further injury to a party. Police should take into account patterns of deprivation of clothing and food, or restrictions on the victim's freedom of movement.

- The determination of the predominant aggressor, and the reasons for that determination, must be included in the police report. Otherwise, offenders will successfully manipulate the system and victims will not be protected. As a result, victims may not contact police the next time violence occurs. (See the Duluth Pocket Card Case Study, above.)
- If the predominant aggressor is misidentified, there could be important legal consequences for the victim, such as the denial of [custody of children](#), of [housing](#) rights and of [immigration](#) rights. Additionally, without being identified as a victim, a person would not be eligible for [shelter](#) or other forms of aid mandated by statute.
- Legislation should also address situations where there is no claim of interpersonal violence, but rather, an allegation that the woman's injuries are due to accidents. Police should be aware of common explanations that offenders use to explain dowry-related injuries, such as stove explosions. Also, police must be able to recognize burn injuries that are reflective or not of genuine accidents, or they must be mandated to send the victim to an authorized medical examiner for a determination. For example, an authentic stove accident will often result in burns to a maximum of 30% of the body on the limbs and stomach. Intentionally-inflicted stove burns can result in injuries on up to 85% of the victim's body.

CASE STUDY: In *Lichhama Devi v. State of Rajasthan*, AIR 1988 SC 1785 (India), the police investigation of a burning death focused only on the mother-in-law and not the victim's husband. Yet, the mother-in-law stated her son may have been guilty, and neighbors recounted the husband being in the kitchen and running downstairs while his wife was on fire. Moreover, the fact that the husband failed to assist her while she was on fire, did not transport his wife to the hospital, and did nothing to obtain a needed blood transfusion for her indicated some involvement with her death. Police, however, only pursued prosecution against the mother-in-law, and the court deplored the investigating body's lack of diligence.

The [Criminal Domestic Violence law of South Carolina, USA](#), includes the following provisions on determining the primary aggressor:

(D) If a law enforcement officer receives conflicting complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer must not arrest the other person accused of having committed domestic or family violence. In determining whether a person is the primary aggressor, the officer must consider the following factors and any other factors he considers relevant:

- (1) prior complaints of domestic or family violence;*
- (2) the relative severity of the injuries inflicted on each person taking into account injuries alleged which may not be easily visible at the time of the investigation;*
- (3) the likelihood of future injury to each person;*
- (4) whether one of the persons acted in self-defense; and*
- (5) household member accounts regarding the history of domestic violence.*

(E) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage a party's requests for intervention by law enforcement.

(F) A law enforcement officer who arrests two or more persons for a crime involving domestic or family violence must include the grounds for arresting both parties in the written incident report, and must include a statement in the report that the officer attempted to determine which party was the primary aggressor pursuant to this section and was unable to make a determination based upon the evidence available at the time of the arrest.

(G) When two or more household members are charged with a crime involving domestic or family violence arising from the same incident and the court finds that one party was the primary aggressor pursuant to this section, the court, if appropriate, may dismiss charges against the other party or parties. Section 16-25-70

(See: [Family Violence: A Model State Code](#) Sec 205 (B); and [Determining the Predominant Aggressor](#), StopVAW, The Advocates for Human Rights)

Probable cause standard of arrest

- Drafters should consider a probable cause standard of arrest, which allows police to arrest and detain an offender if they determine that there is probable cause that a crime has occurred even if they did not witness the offence. (See: [Minnesota 518B.01 subdv. 14\(d\)\(2\)\(e\)](#) and law of [South Carolina](#), Sec. 16-25-70 (A))

See: [Law Enforcement Reform Efforts](#), StopVAW, The Advocates for Human Rights.

- Laws should not allow for anticipatory bail in dowry-related and domestic violence cases involving high-level injuries or lethality or in dowry deaths.

Promising practice: In *Samunder Singh v. State of Rajasthan*, AIR 1987 SC 737, the Supreme Court of India ruled that anticipatory bail, which allows a suspect to seek bail in anticipation of an arrest for the commission of a non-bailable offense, was improperly granted to the defendant in the case of a dowry death. The judge stated that the High Court improperly granted anticipatory bail when would likely give rise to prejudice by its nature and timing. In this case, concerning the unnatural death of a woman in her father-in-law's home, the Court stated "the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in disregard of the magnitude and seriousness of the matter."

CASE STUDY: Article 41 of India's Code of Criminal Procedure authorizes a police officer to make a warrantless arrest of anyone "concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned." These include offenses concerning physical and mental cruelty to woman by husband and in-laws (Art. 498A), criminal breach of trust for entrustment of dominion, for misappropriation of personal property by husband or in-laws (Articles 405), dowry death (Art.304B), abetment of suicide (Article 306), and attempted murder (Art. 307). But note that offenses committed under the [Dowry Prohibition Act](#) are non-cognizable and require a Magistrate order for arrest. In *M.C. Abraham v. State of Maharashtra* (2003) 2 SCC 649: 2003(1) RCR (Criminal) 453 (SC), the Court held that discretion to arrest should be exercised cautiously in a cognizable offense, with regard to the nature of the crime and type of person accused; the court lacks authority to order police to arrest when an investigating officer decides not to make an arrest, and; rejection of anticipatory bail does not constitute a reason for immediate arrest.

Laws should focus grounds for arrest on probable cause and on creating simple and comprehensive arrest authority to facilitate decisive intervention in arrest decisions and diminish the influence of discretionary factors. For example, in cases involving simple or minor injuries, "probable cause" arrest policies allow police officers to make arrests based on the presence of evidence (such as damaged property, visible injuries, or a frightened woman) that would lead to the conclusion that an assault had occurred. Creating broad authority, such as a presumptive arrest, would authorize arrest of perpetrators of violence unless there are "clear and compelling reasons" not to arrest. (See: [Family Violence: A Model State Code](#), Advisory Committee of the Conrad N. Hilton Foundation Model Code Project of the Family Violence Project, 1994, Section 205(A), Commentary)

Duties of prosecutors

- Legislation should clearly state that it is the prosecutor's responsibility to pursue domestic violence, dowry-related violence and dowry death cases regardless of the level of injury or evidence or relationship between the perpetrator and victim. See: [Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice](#) (1997) 7(b), which states that primary responsibility for initiating prosecution rests with prosecution authorities and not with complainant/survivors of domestic violence. Drafters must ensure that crimes involving domestic or dowry-related violence are not treated less seriously than other crimes. (See: law of [Georgia](#), Ch. V. Art. 6) For example, in the law of [Austria](#), *ex officio* prosecution is exercised at all levels of injury in cases of violence. (See: [UN Handbook](#), 3.8.2)

CASE STUDY: Although India's Penal Code includes a presumption of dowry death (Article 304(B)) providing certain elements are met, mere suspicion does not suffice for proof. Faulty investigation can fail to trigger this presumption. In *Ashok Kumar Rath v. State*, 1993 (2) Crimes 940 (Orissa), poor prosecutorial investigation resulted in no proof of dowry death, despite the fact that her death by burning occurred within two years of her marriage. The prosecution's investigation was faulty in establishing cruelty in connection to dowry demands prior to her death and, for example, failed to interview any villagers about the crime. In *Madhubehn v. State of Gujarat*, 1993, a complaint issued by the victim's sister against the prosecution for a similarly deficient investigation led the Court to order the investigation be handled by the Central Bureau of Investigation. (See: V.K. Dewan, *Law Relating to Offences against Women*, 2nd ed., Orient Law House: 2000, p. 147)

- By holding violent offenders accountable, prosecutors communicate to the community that domestic violence and dowry-related violence will not be tolerated.
- Legislation should require prosecutors to ensure that all available evidence has been collected by the police investigating body, including witness statements and photographs of injuries and the scene of the crime. By relying primarily on the evidence collected by the police rather than the victim's testimony, prosecutors may be able to reduce the risk of retaliation by an abuser and increase the likelihood of a successful prosecution.
- Legislation should mandate that prosecutors investigate the level of risk to domestic and dowry-related violence victims in each case. Other agencies of the criminal justice system, including police and judges, should also assess the level of risk to victims. See section on [Lethality and risk assessments](#) below in [Criminal Law Provisions](#) and the sections on [Duties of police](#) and [Duties of judiciary](#).

See: [Role of Prosecutors](#), StopVAW, The Advocates for Human Rights; [Prosecutorial Reform Efforts](#), StopVAW, The Advocates for Human Rights; and [CPS Policy for Prosecuting Cases of Domestic Violence](#), UK (March 2009).

- Legislation should require that prosecutors keep the complainant/survivors informed of the upcoming legal proceedings and their rights therein, including all of the court support systems in place to protect them. The U.N. Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice in General Assembly Resolution 52/86 states that any woman victim of violence should be “notified of any release of the offender from detention or imprisonment where the safety of the victim in such disclosure outweighs invasion of the offender’s privacy (Article 9(b)).”

Promising practice: The law of [Spain](#) creates the position of “Public Prosecutor for cases of Violence against Women,” who must supervise, coordinate, and report on matters and prosecutions in the Violence against Women Courts. Article 70 The legislation also requires prosecutors to notify complainant/survivor of the release of a violent offender from jail and requires prosecutors who dismiss cases of violence against women to tell the complainant/survivor why the case was dismissed.

Pro-prosecution policy

Legislation should include a pro-prosecution policy in cases where there is probable cause that domestic violence occurred. This will ensure that the violence is treated seriously by prosecutors and allow complainant/survivors to retain some agency about the decision. (See: [UN Handbook](#), 3.8.3)

CASE STUDY: Laws should ensure that advocates are available to assist persons file a complaint before the magistrate in cases where police do not file a report. India's Code of Criminal Procedure states that a court shall not take cognizance of an offence under Article 498A "Physical and mental cruelty to woman by husband and in-laws," of the Penal Code except "upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption" (Article 198A). See: Section on Absent Victim Prosecution.

Also, India's Penal Code carries a presumption that the husband or relative committed the dowry death wherever: a woman dies by burns, bodily injury or other extraordinary circumstances, within seven years of her marriage, and evidence shows that shortly prior to her death her husband or his relative subjected her to harassment or cruelty, "for, in connection with, any demand for dowry" (Article 304(B)). Dowry death is a non-bailable and cognizable crime. India's Evidence Act carries accompanying legislation, and Article 113(B) addresses presumption as to dowry death: "When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death." In *Smt. Shanti v. State of Haryana*, AIR 1991 SC 1226, a wife was sent to live with her mother- and sister-in-laws. The in-laws harassed the bride by demanding dowry and cruelty was established. The bride died within seven years of her marriage, and her body was quickly cremated without informing her parents and thus precluding opportunity for a post-mortem examination to determine cause of death. The Supreme Court ruled that this was an unnatural death, whether murder or suicidal. Even if a suicide, this still constitutes an unnatural death for purpose of Article 304(B). The requirement that the death occur within seven years of marriage is overly restrictive, however, as dowry demands and violence can continue to occur after seven years of marriage; in these cases, Article 302 "Punishment for Murder" apply. Laws should not impose a time restriction by which dowry deaths must occur after the marriage.

Drafters must balance the accused's right to be presumed innocent until proved guilty according to law with the need to hold perpetrators accountable. Lawmakers should use character evidence laws to prove a defendant's conduct and promote accountability. Legislation should allow the prosecutor to introduce evidence of prior acts by the defendant, including domestic violence, dowry demands, prior burnings or other stove-related accidents, and threats, to prove guilt, motive, preparation, planning, intent, and/or to acknowledge the absence of mistake or accident.

Absent victim prosecution

- Legislation should provide for the possibility for prosecution of appropriate cases despite the inability or unwillingness of the complainant/survivor to testify. This approach ensures the safety of the complainant/survivor yet offers the support of the criminal justice system. (See: [UN Handbook](#), 3.9.5) Legislation should require prosecutors to consider all evidence in a case that might support or corroborate the statement of the complainant/survivor, including evidence of a history of abuse.
- Legislation should address dowry deaths where the victim is deceased and provide for the admissibility of and guidelines governing dying declarations these cases. For example, India's Evidence Act allows written or verbal statements of relevant facts by a person who is dead, cannot be located, or is incapable of giving evidence as relevant facts in cases regarding cause of death:

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. (Article 32).

- Additionally, dying declarations may be admissible under Article 157, "Former statements of witness may be proved to corroborate later testimony as to same Fact." *In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."*

See: Sections on Duties of Police; and on Evidence.

Promising Practice: In *Pushpawati v. State*, (1986) 2 Cr LJ 1532, the victim of a dowry death made three dying declarations at her brother's home, to a police officer in the hospital and to the sub-divisional magistrate. Although the second declaration failed to name the accused, the Delhi High Court found sufficient prima facie evidence that a homicide took place to deny the accused bail.

Duties of judiciary

- Legislation should state that the judiciary must promote accountability for the perpetrator and safety for the complainant/survivor by instituting penalties for violations of orders for protection (see section on [Orders for Protection](#)) and by implementing safety procedures for complainant/survivors in the courtroom such as the presence of security guards, court escorts, and separate waiting rooms for complainant/survivors and violent offenders. For more information, see [Domestic Violence Safety Plan](#) (“Be Safe at the Courthouse” section). See also: Form V, Safety Plan, [Protection of Women from Domestic Violence Rules, 2006](#), India.
- Legislation should specifically preclude the use of warnings to violent offenders as a part of the judicial response to domestic and dowry-related violence. Warnings do not promote offender accountability or communicate a message of zero tolerance for violence. See section on [Warning provisions](#), above.
- Legislation should provide that judges and court personnel should receive regular and continuing education on: the causes, nature and extent of domestic violence, dowry-related violence and dowry demands; practices designed to promote the safety of victims and family members, such as [safety plans](#); the ramifications of domestic and dowry-related violence in custody and visitation decisions; resources available for victims and perpetrators; sensitivity to gender bias and cultural, racial, and sexual issues; the lethality of domestic and dowry-related violence, and; the dynamics and signs of dowry deaths. See below.

(See: [Family Violence: A Model State Code](#), Sec. 510; [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005))

Lethality or risk assessments

Legislation should include a requirement for the judiciary to utilize a lethality or risk assessment guide. Other agencies of the criminal justice system, including police and prosecutors, should also assess the level of risk to victims. See section on [Lethality and risk assessments](#) below in [Criminal Law Provisions](#) and the sections on [Duties of police](#) and [Duties of prosecutors](#). (See: [Assessing Risk Factors for Intimate Partner Homicide](#) (2003))

CASE STUDY: The Domestic Violence Risk Assessment Bench Guide:

The Domestic Violence Risk Assessment Bench Guide is a research-based guide in use by Minnesota, USA, judges at all stages of family, Order for Protection, civil or criminal cases which involve domestic violence. It includes an assessment and instructions for implementing the assessment. (The assessment can also be used by police, prosecutors, and domestic violence service providers.) Policymakers should adapt this guide to meet the particular dynamics of dowry-related violence, for example, following the suggestions in capital letters.

Note: The **presence** of these factors can indicate **elevated risk** of serious injury or lethality. The **absence** of these factors is not, however, evidence of the absence of risk of lethality.

1. Does alleged perpetrator have access to a firearm OR ACID, or is there a firearm OR ACID in the home?
2. Has the alleged perpetrator ever used or threatened to use a weapon against or burn the victim?
3. Has alleged perpetrator ever attempted to strangle, BURN or choke the victim?
4. Has alleged perpetrator ever threatened to or tried to kill the victim?
5. Has the physical violence increased in frequency or severity over the past year?
6. HAS THE VICTIM SUFFERED ANY STOVE OR BURN "ACCIDENTS?"
7. Has alleged perpetrator forced the victim to have sex?
8. Does alleged perpetrator try to control most or all of victim's daily activities? DOES THE PERPETRATOR OR HIS RELATIVES DEPRIVE THE VICTIM OF FOOD AND CLOTHING OR RESTRICT HER FREEDOM OF MOVEMENT?
9. Is alleged perpetrator constantly or violently jealous?
10. Has alleged perpetrator ever threatened or tried to commit suicide?
11. Does the victim OR HER RELATIVES believe that the alleged perpetrator will re-assault or attempt to kill the victim? A "no" answer does not indicate a low level of risk, but a "yes" answer is very significant.
12. Are there any pending or prior Orders for Protection, criminal or civil cases involving this alleged perpetrator?
13. IS THERE A HISTORY OF DOWRY DEMANDS FROM THE PERPETRATOR OR HIS RELATIVES, OR A HISTORY OF GIFT GIVING FROM THE VICTIM'S FAMILY TO THE PERPETRATOR OR HIS RELATIVES? IF SO, WHAT IS THE HISTORY OF MET AND UNMET DOWRY DEMANDS?

Note: These risk assessment factors are validated by a number of studies. See Campbell, Jacquelyn, et al., "Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners", National Institute of Justice (December, 2005); Heckert and Gondolf, "Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault", Journal of Interpersonal Violence Vol 19, No 7 (July 2004).

How to use the domestic violence risk assessment bench guide

- **Obtain information regarding these factors through all appropriate and available sources.**

Potential sources include police, victim witness staff, prosecutors, defense attorneys, court administrators, bail evaluators, pre-sentence investigators, probation, custody evaluators, parties, PARTIES' RELATIVES, and attorneys.

- **Communicate to practitioners that you expect that complete and timely information on these factors will be provided to the court.**

- This ensures that risk information is both sought for and provided to the court at each stage of the process and that risk assessment processes are institutionalized.
- Review report forms and practices of others in the legal system to ensure that the risk assessment is as comprehensive as possible.

- **Expect consistent and coordinated responses to domestic AND DOWRY-RELATED violence.**

Communities whose practitioners enforce court orders, work in concert to hold alleged perpetrators accountable and provide support to victims are the most successful in preventing serious injuries and domestic homicides.

- **Do not elicit safety or risk information from victims in open court.**

- Safety concerns can affect the victim's ability to provide accurate information in open court.
- Soliciting information from victims in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the victim.

- **Provide victims information on risk assessment factors and the option of consulting with confidential advocates.**

Information and access to advocates improves victim safety and the quality of victims' risk assessments and, as a result, the court's own risk assessments.

- **Note that this list of risk factors is not exclusive.**

- The listed factors are the ones most commonly present when the risk of serious harm or death exists.
- Additional factors exist which assist in prediction of re-assault.
- Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports, AND LOSS OF PERSONAL PROPERTY, DOWRY AND OTHER ASSETS.

- **Remember that the level and type of risk can change over time.**

- The most dangerous time period is the days to months after the alleged perpetrator discovers that the victim
 - might attempt to separate from the alleged perpetrator or to terminate the relationship
 - has disclosed or is attempting to disclose the abuse to others, especially in the legal system.

RISK LEVELS CAN ALSO INCREASE WHEN DOWRY DEMANDS ARE UNMET.

- Legislation should specifically preclude police and legal system officials from offering mediation or assisted alternative dispute resolution services to parties, both before and during legal proceedings in domestic and dowry-related violence cases. Police and judges should not attempt to improve relations in the family by offering these services or by mediating a dispute. (See: [UN Handbook](#) 3.9.1 and section on **Duties of police officers**). Also, mediation, counseling and alternative dispute resolution should never be a prerequisite to legal proceedings where domestic violence or dowry-related violence is involved.
- Mediation reflects an assumption that both parties are equally at fault for the violence. It assumes that both parties have equal bargaining power, yet in reality an abuser may hold tremendous power over a victim. Mediation also removes a domestic or dowry-related violence case from public view and objective judicial scrutiny. (See: [Mediation](#), StopVAW, The Advocates for Human Rights; and [Family Violence: A Model State Code](#), Sec. 311)

Promising practice: [Spain's](#) law prohibits the use of mediation in domestic violence cases. (Art. 44)

CASE STUDY: Under Article 14 of India's domestic violence law, the judge may direct the victim or perpetrator to undergo counseling either together or singly. In *T. Vineed v. Manju S. Nair*, 2008(1)KLJ 525, the court appointed a counselor to mediate child custody issues in a case involving an application under the domestic violence law and divorce proceedings on the basis of cruelty. A settlement was reached with the counselor, and the High Court of Kerala ruled that matrimonial cases must exhaust court-mediated settlement option prior to starting the legal proceedings. (See: Lawyers Collective, [Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act, 2005](#), 2008, p. 64-65) Legislation should disallow mediation or court-mediated settlements in any cases involving domestic violence. (See: Section on Mediation; [Mediation](#), StopVAW, The Advocates for Human Rights)

Timely and expedited proceedings

- Legislation should require that legal proceedings occur on a timely basis. Experience has shown, however, that if proceedings are expedited too quickly, a complainant/survivor may withdraw if she feels that it is out of her control.
- For example, in Spain, the Organic Act on Important Reviews of the Code of Criminal Procedure (2002) provided that court hearings in domestic violence cases should come before a judge within 15 days. Some complainant/survivors withdrew from the process, suggesting that the speed of the court hearing might make the complainant/survivor feel they aren't able to make decisions about their relationship at their own pace. (See [UN Handbook](#), 3.9.2)

Promising Practice: Some governments have established special courts to help expedite proceedings in civil and criminal cases. The UK has domestic violence courts across the country to coordinate and improve the responses of police, prosecutors, court staff, the probation service and specialist support services. Criminal justice staff are trained in domestic violence, courts intentionally group cases together to focus resources for scheduling, and the courts provide Independent Domestic Violence Advisors for support. Bangladesh has established at least one Nari O Shishu Nirjaatan Daman Tribunal in each district to try offences under the Prevention of Oppression Against Women and Children Act 2000. (See: [Specialized Domestic Violence Court Systems](#), StopVAW, The Advocates for Human Rights)

Criminal laws

Criminal penalties and procedures

- Legislation should provide both a civil remedy and criminal penalties for dowry-related violence. While orders for protection limit the defendant's conduct; criminal sanctions label that conduct as wrong. (See: [Orders for Protection](#), StopVAW, The Advocates for Human Rights) Legislation should impose penalties for all acts of domestic and dowry-related violence, including those involving low-level injuries. A 2009 study entitled [Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges](#) reported that enhanced penalties significantly reduced re-arrest rates for domestic violence offenses. p. 52
- Offenses such as assault, threats of assault, criminal sexual conduct, interference with an emergency call, forced eviction, false imprisonment, and willful deprivation of basic human needs, such as food and clothing when they occur between the woman and her husband or her in-laws all constitute dowry-related violence. Legislation should state that payment of bride price or non-payment of dowry are not defenses to charges of domestic or dowry-related violence. Dowry-related offenses should be non-compoundable and be non-bailable where high-level injuries or lethality indicators are present. Legislation should prohibit the granting of anticipatory bail in these dowry cases.
- Legislation should criminalize other acts of violence, such as domestic assault by stove burning and assaults with corrosive or other substances. Legislation should impose higher penalties that reflect the lethality of such offenses. The UN DAW Expert Group Meeting in its report on [Good Practices in Legislation on “Harmful Practices against Women”](#) (2009) recommends establishing a specific offence for acid attacks, defining it as “any act of violence perpetrated through an assault using acid,” and criminalizing the unlicensed sale of any type of acid (Sections 3.3.6.1, 3.3.6.2). The report also defines “stove burning” as a case where “a woman is injured or dies as a result of harm inflicted through the use of fire, kerosene oil or other stove-related matter” and recommends establishing a specific crime of stove burning (Sections 3.3.5.1, 3.3.5.2. For example,

Bangladesh's Prevention of Oppression Against Women and Children Act 2000 punishes offences by corrosive or other substances (Article 4). Minnesota has created a separate offense for domestic violence by strangulation ([MN Statute 609.2247](#)), making it a felony.

- Legislation should criminalize illegal demands for dowry by making it a specific offense or through an extortion or other clause. India's Penal Code contains a provision, entitled Criminal Breach of Trust:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust.""

- Legislation should also create offenses that involve both violence and extortion to reflect the economic nature of dowry-related violence or designate extortion/dowry demands as an aggravating factor for sentencing purposes in criminal domestic assault. Extortion statutes should include provisions that focus both on intentional infliction of fear of injury (emotional distress), as well as actual infliction of injury (physical assault). See: Section on Addressing dowry-related violence through criminalization of dowry demands.

Dowry deaths

Dowry deaths should be punished by criminal laws governing murder. Drafters should consider whether to punish dowry deaths as a specific offense or make the presence of dowry demands and dowry-related violence an aggravating factor in sentencing. Should drafters choose to punish dowry deaths as a specific offense, legislation should impose penalties that are commensurate with other first-degree murders.

Promising practice: Minnesota criminal laws punish a homicide committed through domestic violence as first degree murder. [Minnesota Statute 609.185\(6\)](#) states that whoever "causes the death of a human being while committing domestic abuse, when the perpetrator has *engaged in a past pattern of domestic abuse* upon the victim or upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life" shall be punished by life imprisonment (emphasis added). See *infra* Statute of Limitations in this section. Legislation should punish a homicide committed through dowry-related violence or as a result of unmet dowry demands as first-degree murder. Legislation governing dowry deaths should not require that the dowry-related violence occur soon before her death, but require a "past pattern of dowry-related violence."

CASE STUDY: Laws should reflect that demands for dowry may persist well beyond seven years of marriage and not impose limitations as to when the death must occur. Instead, laws should focus on the presence of a past pattern of domestic violence or dowry demands. Article 304B of India's Penal Code governs dowry deaths. It states:

“(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation- For the purpose of this sub-section, "dowry" shall have the same meaning. as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

Where there is a specific offense for dowry murder, legislation should also include a provision for attempted dowry murder. The Supreme Court of India found in *Satvir Singh v. State of Punjab*, AIR 2001 SC 2828:2001 (7) Supreme 267: 2001 (6) SLT 803: 2001 VIII AD (SC) 221 that Section 498A of the Indian Penal Code governing cruelty to a woman by her husband or in-laws supplanted Section 511 governing an attempt to commit an offense. In this case, the offender drove the woman to the railway station to compel her to commit suicide and throw herself before the train. Instead of applying Section 511, the court found Section 498A sufficiently encompassed the offender's failed attempt, because it addresses any willful conduct that is likely to compel the woman to commit suicide. Commentators have suggested that drafters amend Section 304B to include attempt to cause dowry death to reflect those instances where the offender does not succeed in compelling the woman to commit suicide. See: Ish Kumar Magoo & Shyam Sunder Geol, *An Eagle Eye on Dowry Demand Cruelty and Dowry Death*, at 282-83 (2004).]

See also: Report of the Special Rapporteur on violence against women, its causes and consequences, a framework for model legislation on domestic violence, 1996, [E/CN.4/1996/53/Add.2](#), at, II 3, which urges States to adopt a broad view of the relationships in which domestic violence might occur, in compatibility with international standards.

Legislation should criminalize negligent homicide, in which a person causes the death of another through negligent conduct.

Aiding and abetting suicide

- Legislation should criminalize any act of and attempts to intentionally advise, encourage, abet or assist another in committing suicide.

Example: India's Penal Code punishes the abetment of suicide. Article 306 states:

"If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

CASE STUDY: In the Indian case, *Gopalan Nair Krishna Pillai v. State of Kerala*, 1988 (3) Crimes 489, the husband-defendant abused his wife for failing to meet his dowry demands. Although the victim earned a wage which paid the household expenses and she gave birth to a son as he desired, the defendant continued to demand that she obtain more money from her parents' home. Following separation, the husband's lawyer negotiated a compromise and assured her she was safe. The husband continued to demand more money, which the victim requested from her mother. When her husband did not receive immediate payment, he continued to abuse her, and she committed suicide. The husband was convicted of abetment of suicide.

- Drafters should take into account that dowry-related murders may be disguised as suicides. Drafters should enact legislation to punish perpetrators who commit perjury, conspire, use bribery, violence, intimidation, threats or deception, destroy or tamper with evidence or the body, to obstruct justice. See: Section on Obstruction of Justice; Charles Doyle, [Obstruction of Justice: An Abridged Overview of Related Federal Criminal Laws](#), 2007. Also, drafters should consider enacting an offense that focuses on the death of a woman under unnatural circumstances when there is a history of domestic violence. For example, in *Shanti v. State of Haryana*, AIR 1991 SC 1226, the court ruled that whether the death was by suicide or murder was irrelevant providing the death was unnatural. A death by suicide is in itself an unnatural death and would trigger Article 304B "Dowry Deaths" providing the other elements—cruelty or harassment by her husband or in-laws soon before her death and death within seven years of marriage—are met.
- Legislation should not impose a time limitation on when the death must occur, but instead focus on a history of domestic violence and unnatural circumstances surrounding the death.

Statute of limitations on dowry-related violence and deaths

- Drafters should reject any timeframe that limits accountability for dowry-related violence or deaths. Demands for dowry, and the accompanying acts of violence, may be made before, during or after the marriage ceremony. Laws should not limit criminal liability to acts that take place within a specific time frame.

CASE STUDY: India's dowry death law limits its scope to a death that occurs within seven years of her marriage (Article 304B, India Penal Code). Demands for dowry and associated violence may persist and continue well past seven years, however. Laws should not place any time limit on when the death must occur.

- Drafters should ensure laws do not impose a statute of limitations for dowry deaths or dowry-related violence. Most jurisdictions do not impose a statute of limitations for crimes resulting in death, and some jurisdictions impose no statute of limitations for sex offenses or crimes of violence. (See: [Criminal Statutes of Limitations](#), at 4)

Obstruction of justice

- Legislation should punish obstruction of justice. For example, perjury, conspiracy, bribery, violence, intimidation, threats, deception, destruction of or tampering with evidence or the body may all constitute acts to obstruct justice. (See: Section on Obstruction of Justice; Charles Doyle, [Obstruction of Justice: An Abridged Overview of Related Federal Criminal Laws](#), 2007)

Promising Practice: Pakistan's Code of Criminal Procedure requires police to investigate suicides, accidental and other deaths, and suspicious deaths.

174. Police to inquire to report in suicide, etc.: (1) The officer incharge of a police station or some other police officer specially empowered by the Provincial Government in that behalf, on receiving information that a person-

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, . .

shall immediately give intimation thereof to the nearest Magistrate empowered to hold (inquests and unless otherwise directed by any rule prescribed by the Provincial Government, shall proceed to the place where the body, of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body and stating in what manner, or by what weapons- or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the [concerned] Magistrate. (3) When there is any doubt regarding the cause of death or when for any other reason the police-officer considers it expedient so to do, the shall, subject to such rules as the Provincial Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Provincial Government, if the state of the weather and the distance admits of its being so forwarded without of such putrefaction on the road as would render such examination useless.

- Legislation should require bodies that are burned to be transported to an authorized medical officer for examination as to the actual cause of death. In the Indian case of *Mulkah Raj v. Satish Kumar*, AIR 1992 SC 1175: 1992(2) Crimes 130 (SC), the examining medical officer conducted a post-mortem examination of the victim's body, 95 percent of which was covered in burns. Upon examination, the doctor determined that death was the result of asphyxia due to strangulation. The burns occurred after the victim died and indicated that the body had been drenched in kerosene.

Criminal sanctions and sentencing provisions

- Criminal penalties should be increased for repeated domestic and dowry-related violence offenses, even if they involve low-level injuries. (See: [Family Violence: A Model State Code](#), Sec. 203) Legislation should provide that sentencing be enhanced for repeat offenses, including repeated violations of orders for protection. Andorra's approach is to states that domestic violence repeat offenders shall receive a term of imprisonment irrespective of any other penalty that may be imposed on account of the injuries caused in each instance. [The Criminal Code \(2005\) of Andorra](#), Article 114.

For example, the law of [Malaysia](#) provides increased penalties for violations of protection orders and for violations that involved violence, and also allows the court to make a new order for protection:

8. (1) *Any person who willfully contravenes a protection order or any provision thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.*

(2) *Any person who willfully contravenes a protection order by using violence on a protected person shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or to both.*

(3) *Any person who is convicted for a second or subsequent violation of a protection order under subsection (2) shall be punished with imprisonment for a period of not less than seventy-two hours and not more than two years, and shall also be liable to a fine not exceeding five thousand ringgit.*

(4) *For the purposes of this section a "protection order" includes an interim protection order.*

9. *Where a person against whom a protection order has been made contravenes the protection order, the court may, in addition to any penalty provided for under section 8, make or make anew, as the case may be, any one or more of the orders under subsection 6(1), to commence from such date as is specified in such new order.* Part II, 8 and 9.

- Legislation should specify that penalties for crimes involving domestic and dowry-related violence should be more severe than similar non-domestic violence- and dowry-related crimes. This sends the important message that the state will treat a domestic or dowry-related violence crime very seriously. For example, the [Criminal Code \(2007\) of Hungary](#) requires higher penalties for a person who harasses their ex-spouse or their child than if they harass someone else. Section 176/A. [Amendments to the Criminal Code \(1994\) of France](#) provide higher penalties for certain acts of torture or violence when committed by a spouse or cohabitee of the victim. Articles 222-3, 222-8, 222-10 and 222-11. See: the [Criminal Code \(2002 \) of Moldova](#), which provides higher penalties for murder and severe and deliberate acts of violence against a spouse or close relative. Articles 145, 150, 151, 152 and 154. It also provides a higher penalty for inducing a spouse or close relative to commit suicide. Article 150. The [Criminal Code \(2004\) of Romania](#) provides for a higher penalty for the murder of a spouse or close relative (Article 179) or the rape of a family member. Article 217.

Promising practice: In Minnesota, USA, as well, these crimes include higher penalties than the same crime committed outside a domestic relationship: domestic assault which includes strangulation; murder while committing domestic violence or if the perpetrator has engaged in a past pattern of domestic violence; and unintentional murder when the perpetrator is restrained under an OFP and the victim was designated to receive protection under that order. (See: [Minn.Stat. §609.185\(a\)\(6\)](#); and [Minn.Stat. §609.19 Subd.2\(2\)](#))

CASE STUDY: India's Penal Code imposes either death or life imprisonment for murder (Article 302). It imposes a lighter sentence, however, for dowry deaths, which ranges from seven years to life imprisonment (Article 342(b)(2)). Legislation should impose sentences for dowry deaths that are commensurate with other first-degree murders. Also, legislation should not impose the death penalty as a sentence so as to respect the international trend toward abolition and to prevent non-conviction judgments as a means of avoiding sentencing a defendant to death.

- Legislation should include guidelines for appropriate sentences for domestic violence and dowry-related offenses. For a list of goals in sentencing, see: [Report of the Intergovernmental Expert Group Meeting to Review and Update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), March 2009, 17(a). Legislation should provide that sentencing guidelines reflect the gravity of the offense. For example, Article 11 of Bangladesh's Prevention of Oppression Against Women and Children Act 2000 punishes dowry injury and death by imprisonment of five to fourteen years plus a fine, and dowry death by life imprisonment plus a fine: *"the husband of a woman or his father, mother, guardian or any other person on behalf of the husband, causes death or attempts to cause death, cause hurt or attempts to cause hurt to the woman, the husband, the father, mother guardian, relative or any other person on his behalf, shall; i. for causing death or attempt for causing death, be punished with transportation for life and also with fine, in both case; ii. be punished with transportation for life for causing hurt and with imprisonment for either description which may extend to fourteen years but not less than five years of rigorous punishment in case of attempt to hurt and also with fine in both the case."*
- Legislation should increase the punishment if the violence is accompanied by dowry demands, dowry-related harassment or is accomplished using a weapon, burning or with acid. The [Criminal Code of Serbia](#) increases the term of imprisonment if domestic violence is committed with a weapon or if death results. Article 194. India's Penal Code punishes voluntarily causing grievous hurt by seven years' imprisonment and a fine (Art. 325), and increases the punishment to a maximum sentence of ten years and a fine for voluntarily causing grievous hurt by dangerous weapons or means, such as "by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood" (Art 326).

- For example, [South Carolina](#), USA, has more severe penalties for “criminal domestic violence of a high and aggravated nature” when one of the following occurs:

The person commits: (1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or (2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death. Section 16-25-65 (A)

- Legislation should allow an option for a judge to eliminate a fine if it would create a financial burden for the complainant/survivor or else direct that the fine be remitted to the victim or her heirs. Although fines are commonly issued as a part of sentencing perpetrators, fines can present a significant problem for a complainant/survivor who must make use of the assets of the perpetrator to feed and house a family. If dowry-related offenses do impose a fine, legislation should provide that the money from those fines is remitted to the victim in her name. Legislation should include victim restitution claims as part of a sentencing scheme in dowry-related violence and deaths. Laws should direct the prosecutor to assign officials to assist the victim in seeking restitution and making an itemized claim for damaged or lost property, medical bills, and other losses as part of the criminal sentence. Laws should authorize judges to order the defendant to pay such restitution to the victim as a part of, but not as a substitute for, a prison sentence.
- Legislation should require judges to consider victim impact statements in all cases of domestic violence.

Promising Practice: Pakistan’s draft domestic violence bill criminalizes a violation of a protection order by the accused and imposes a prison sentence of 6 months to one year and a fine of at least one hundred thousand rupees. Where a person commits multiple violations of a protection order, the sentence is imprisonment between one to two years and a fine of at least two hundred thousand rupees. In both cases, the court is mandated to order that the fine be given to the aggrieved person. (Article 13(1)-(2)).

Addressing dowry-related violence through criminalization of dowry demands

- Legislation should criminalize demands for dowry carried out with the infliction of injury, grievous injury, death or attempts thereof, or with the threat of injury, grievous injury or death. Drafters should do so either by creating a specific offense of illegal dowry demands or incorporating the offense into existing extortion laws.
- Extortion statutes should include provisions that focus both on intentional infliction of fear of injury (emotional distress), as well as actual infliction of injury

(physical assault). For example, the [Pakistani Penal Code's](#) chapter on extortion focuses on the intentional infliction of fear of injury to oneself or a third person:

383. Extortion:

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

384. Punishment for extortion:

Whoever, commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Putting person in fear of injury in order to commit extortion:

Whoever, in order to the committing of extortion, puts any, person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Extortion by putting a person in fear of death or grievous hurt:Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person to any other, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion:

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any Other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

- India's Penal Code defines extortion, as intentionally placing one in fear of injury to herself or another: "Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion" (Article 383). India's Penal Code similarly punishes extortion through infliction of fear of injury to oneself or a third person as offences against property (Articles 383-86). India's Penal Code also punishes infliction of injury for purposes of extortion as offences against the human body. Article 327 states:

"Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Article 329 states:

“Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with 152[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

- Legislation should address the difficult task of proving a gift was extorted as opposed to voluntarily given. Legislation should include language defining “voluntarily given” as gifts made without any demand having been made for it or pursuant to any form of coercion, threat, violence, inducement or promise. Legislation should describe gifts that are involuntarily given as those given in response to willful conduct, threats or harassment of a nature that is likely to coerce the woman or her family into satisfying demands for property or valuable security. (See: [National Commission for Women, Recommendations and suggestions on Amendments to the Dowry Prohibition Act](#)) Imposing ceilings on gift amounts is another option, but may be problematic in societies where income and assets are widely underreported.

Evidence

- Legislation should provide that medical or forensic evidence is not required for domestic violence convictions.
Legislation should prevent the introduction of the survivor’s sexual history in both civil and criminal proceedings either during the trial or during the sentencing phase.
- Legislation should state that a survivor, including a minor survivor, may receive a medical and forensic examination regardless of whether or not the survivor reports to law enforcement. In countries with mandatory reporting laws, legislation should require mandatory reporters to provide a full explanation of laws and policies to the survivor when a report is required.
- Legislation should state that the survivor, including a minor survivor, may be examined and treated by a forensic doctor or other medical practitioner without the consent of any other person.
- Legislation should state when the survivor is referred for medical examination, the examination should be done at the expense of the state.
- Legislation should allow the presentation of expert testimony on domestic violence. Jurors who are exposed to relevant social and psychological research on domestic violence are more likely to understand the dynamics of domestic violence, power and control tactics, and the dynamics of victimization. Experts could assist the court in explaining such victim actions as recantation, returning to an abuser, or demonstrating ambivalence about prosecution of an abuser.

- Legislation should provide that a court may not distinguish between the weight given to the testimony of a complainant in a domestic violence case and the weight given to the testimony of any other witnesses.
- Legislation should allow for the admissibility of dying declarations as evidence and establish standard guidelines for recording a dying declaration. Police, medical professionals and judges should be trained and authorized to record a dying declaration from a dowry death victim. Corroboration of the dying declaration should not be required for admissibility.

Prompt complaint

Legislation should state that no adverse inference shall be drawn from a delay between the act of violence and the reporting of the act of violence. The judicial officer should be required by the legislation to so inform the jury.

Treatment or diversion programs for perpetrators

- Legislation should provide that if intervention, treatment or diversion programs (pretrial diversion programs are alternatives to prosecution which seek to divert offenders with no prior offences from traditional criminal justice processing into a program of supervision and services) are prescribed for perpetrators, the operators of such programs must work in close cooperation with survivor service providers to enable constant feedback from the complainant/survivor about the recurrence of violence. Legislation should provide that all sentences to alternative, treatment, or diversion programs are to be handed down only in cases where there will be continuous monitoring of the case by justice officials and survivor organizations to ensure the survivor's safety and the effectiveness of the sentence. Legislation should require that such alternative sentences be monitored and reviewed on a regular basis. Legislation should require immediate reports to probation officers and police about recurring violence. (See: [UN Handbook](#) 3.11.6; [The Toolkit to End Violence Against Women](#), p. 14)
- For example, the [Criminalization of Violence against Women Law \(2007\) of Costa Rica](#) (Spanish only) includes detailed conditions on when alternative sentences may be imposed, and on the alternatives which are available. Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) (2004) provides for suspension of certain penalties (under two years in jail) if the perpetrator participates in an intervention programme. Article 35

Lethality or risk assessments

- Legislation should mandate that the police, prosecutors, and the judiciary investigate the level of risk to domestic and dowry-related violence victims. Such assessments are vital to determining the risk of further injury to the victim, or homicide, and should play an important role in police and judicial response to each case. See: [Duties of police](#), [Duties of prosecutors](#), and [Duties of judiciary sections](#), above. Also, the UN DAW Expert Group Meeting in its report on [Good Practices in Legislation on “Harmful Practices against Women”](#) (2009) recommends that laws mandate medical officials to report to police any case of grievous bodily harm caused by fire, kerosene oil, or other stove-related matter and mandate police to investigate these cases (Section 3.3.5.2). Similarly, the report mandates medical personnel to report any case of bodily harm caused by acid to police (Section 3.3.6.2).
- Such an assessment should include such questions, such as “Have you been choked?” “Does he possess a firearm or other weapon and has he threatened to use it?” “Have you ever suffered injuries from a stove or kerosene or otherwise been burned?” or “Has your husband or his relatives been asking you or your family for dowry, and if so, what is the full history and were those demands met?” “Has there been a history of physical violence against the bride or her relatives by the husband or his relatives?” The assessment can give the legal system and the complainant/survivor important information to prepare for her safety. See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009, Section IV, 16 (f).

Promising practice: The [Alberta Relationship Threat Assessment and Management Initiative](#) of Alberta, Canada is a domestic violence threat assessment unit that involves academic specialists, family law experts, child intervention case workers, police, and prosecutors. It coordinates the efforts of justice officials and community organizations to more effectively address threats posed in violent, high-risk relationships and stalking situations. It also serves as a resource for police, domestic violence shelters, corrections officials, mental health workers, and communities.

Felony strangulation and other provisions

- Legislation should provide serious penalties for strangulation. Many domestic violence victims have experienced some form of attempted strangulation, which has often been discounted as “choking.” This form of abuse can have serious physical and psychological consequences, and is often a precursor to deadly violence.
- Also, legislation should provide serious penalties for stove burnings, other burnings and acid assaults. Drafters should ensure that offenses using dangerous weapons, fire, acid or oil to inflict injury or death are a specific and serious crime. For example, Article 324 of the Bangladesh Penal Code punishes

voluntarily causing hurt by dangerous weapons or means: “Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison of any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Promising Practice: A provision of Minnesota, USA, law ([Minn. Stat §609.2247](#)) which makes strangulation of a family or household member a specific and serious crime.

See: [The Impact of the Minnesota Felony Strangulation Law](#). This report examines the impact the law has had on victim safety, defendant accountability, and public awareness.

(See: Minnesota Coalition for Battered Women, “[Facts About Intimate Partner Strangulation](#)” (2009); and Minnesota Coalition for Battered Women, “[Information about Murder-Suicide](#)” (2009))

Fatality reviews

- Legislation should require domestic and dowry-related violence fatality reviews. These are reviews, conducted by police, advocates and other community responders, which examine community systems to assess whether such homicides could have been prevented had various institutions responded differently. Such fatality reviews should also track and evaluate the impact of dowry regulation or registration systems on dowry-related deaths. (See: [Domestic Fatality Review Board](#), StopVAW, The Advocates for Human Rights. For example, see: Hennepin County Domestic Fatality Review Team, [A Matter of Life and Death: 2007 Findings of the Domestic Fatality Review Team](#), 2007)
- [Pakistan's Code of Criminal Procedure](#) requires a police officer to investigate any suicides or suspicious or accidental deaths and file a report. The police has discretion, when cause of death is doubtful, to forward the body to a civil surgeon for examination (Article 174). A judge also has the authority to disinter a corpse, where it would be necessary to discover the cause of death (Article 176).
 - See: Chapter 4 of [The Toolkit to end Violence against Women](#), p. 15.

Promising practices:

The [Domestic Violence, Crime and Victims Act \(2004\) of United Kingdom](#) (hereinafter law of United Kingdom) provides for “domestic homicide reviews” which review the death of persons age 16 or over when the death appears to have resulted from violence, abuse, or neglect by a family member, intimate partner, or member of the same household. The review is to be “held with a view to identifying the lessons to be learnt from the death.” 9

In [Ireland](#), the Office of Director of Public Prosecutions (ODPP) is conducting a review of the female domestic violence homicides from the past 10 years, “with a view to determining the nature and quality of interventions with the victim and or perpetrator, and whether opportunities for effective intervention were maximised. The research will also examine the requisite steps for the introduction of a domestic violence homicide review mechanism in Ireland.” (See: [Researching the Antecedents to Female Domestic Homicides](#))

Conditions of release

- Legislation should provide specific direction to law enforcement officials about the conditions of release for violent offenders who have been arrested for violating an order for protection or for an act of domestic violence. See: the [Code of Criminal Process \(2007\) of Portugal](#), which reinforces the prohibition on the offender to contact certain offenders in any way.
- Police and judicial officials must make determinations about victim safety, including the threat that the violent offender presents to the complainant/survivor, her family, and her associates, and must place conditions upon the release of the offender that reflect these concerns. (See section on [Lethality and risk assessments](#))

See: [Family Violence: A Model State Code](#), Sec 208.

Promising practice: Some US states require that certain violent offenders who may be likely to re-offend wear a satellite tracking device so that if they enter certain prohibited zones, such as the areas surrounding the survivor's home, workplace, or daycare, an alarm is triggered to warn police and the survivor. Advocates report that when an offender knows that they are being monitored and the consequences are swift, homicides related to domestic abuse drop. GPS devices cost about \$25 USD per day per offender, compared to \$75 USD to keep an offender in jail.

For example, the [Act Further Protecting Victims of Domestic Violence \(2006\) of Massachusetts, USA](#) (hereinafter the law of Massachusetts) states:

"Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant's ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system." Ch. 418, Sect. 7

See: [Illinois, USA, Code of Criminal Procedure, Sec. 110-5](#).

- The [Criminal Code of Portugal \(2007\)](#) also provides for technical monitoring of offenders.

Civil remedies on dowry-related violence

Order for protection remedies

- Lawmakers should include an order for protection remedy for victims of dowry-related violence or incorporate dowry-related violence into a domestic violence framework that provides such a remedy. Many states have created order for protection remedies for complainant/survivors of domestic violence in their criminal and civil legislation. In the criminal system, or criminal no contact orders, may provide similar remedies as the civil order for protection. The criminal no contact order may be a part of the criminal process when a violent offender is accused of a crime. (For example, see: [Domestic Abuse Act of Minnesota, \(1979\)](#), [Minnesota, §518B.01 Subd.22.](#))

Promising Practice: In addition to enacting specific legislation on dowries, India has incorporated violence related to illegal dowry demands into its definition of domestic violence and provides an order for protection remedy. (See: [Protection of Women from Domestic Violence](#)) An earlier draft of Pakistan’s domestic violence bill had incorporated dowry demands as a form of domestic violence as “[h]arasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry; or other property or valuable security.” See: [Good practices in legislation to address harmful practices against women in Pakistan](#), at 11 (footnote 22). The latest version of Pakistan’s [domestic violence law](#), however, omits reference to dowry demands. Similarly, Bangladesh includes dowry deaths in the [Prevention of Oppression Against Women and Children Act 2000](#), but does not address orders for protection in this act. Lawmakers should include violence and harassment related to dowry demands in a definition of domestic violence. See: Section on Definition of Dowry-related Violence.

- Civil orders for protection orders can take the form of emergency or ex parte orders (temporary orders issued without notice to the defendant), which last a short time, or complainant/survivors may seek longer-term orders for protection. These longer orders can require a full hearing before a judge with the respondent present. The [Domestic Abuse Act of Minnesota, USA \(1979\)](#), ([Minn. Stat. §518B.01 Subd.4](#)) was among the first laws on orders for protection in the world, enacted more than thirty years ago. The order for protection remedy has proven to be one of the most effective legal remedies in domestic violence cases. See: [Orders for Protection](#), StopVAW, The Advocates for Human Rights. Because dowry-related violence is a form of domestic violence, lawmakers should ensure that orders for protection are made available to survivors/complainants of dowry violence.
- Lawmakers should consider expanding or including other types of remedies in addition to the traditional order for protection that take into account the dynamics of dowry-related violence. For example, India’s [Protection of Women from Domestic Violence Act, 2005](#) includes an order for protection addressing the domestic violence and alienation of assets, a residence order restraining the perpetrator’s use of the shared household and directing the perpetrator to secure

the victim alternate accommodation, as well as custody orders and compensation orders. Lawmakers may wish to draw upon Article 19(1)) when incorporating the remedies of a residence order in a dowry-related violence law; the residence order should authorize the judge to prohibit the perpetrator from dispossessing or interfering with the victim's possession of the shared home, irrespective of the perpetrator's legal interest in the home; order the perpetrator to leave the home; prohibit the perpetrator or any of his relatives from entering the shared home where the victim is living; prohibiting the perpetrator from alienating, encumbering or disposing of the shared home; prohibiting the perpetrator from repudiating his obligations to the shared home, and; order the perpetrator to pay for comparable accommodation. The law authorizes the magistrate to direct the respondent "to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to" (Article 19(8)). Legislation should use compulsory language that mandates the police to execute an order for protection.

CASE STUDY: Legislation should not preclude orders for protection from being passed against women. For example, in *Smt. Sarita v. Smt. Umrao* 2008 (1) R. Cr. D 97 (Raj), a challenge was brought under India's domestic violence law that because women cannot be respondents, the petition against the mother-in-law should be withdrawn. The petitioner argued that she may file a complaint against relatives of her husband, and as the term "relative" is not gender-specific, may include her mother-in-law. The Rajasthan High Court found that "relative" is broad and may include all relatives, including female relatives, of the husband regardless of her sex. *Nand Kishor and others vs. State of Rajasthan* MANU/RH/0636/2008 and *Rema Devi v. State of Kerala I* (2009) DMC 297 have ruled that women can be made respondents under Lawyers Collective, [India's domestic violence law. See: Landmark Judgments & Orders \(Recently Updated\)](#).

Emergency or ex parte order for protection remedy

- Legislation should create an emergency or ex parte order for protection as a vital aspect of a domestic or dowry-related violence law. An ex parte order for protection is based upon the assumption that the complainant/survivor is in danger of immediate harm and must be protected by the state. The safety of a complainant/survivor and her children should be the most urgent priority of the legislation.

For example, the law of [Sierra Leone](#) states that:

"(1) Where an application is made ex parte to the court for a protection order, the court shall issue an interim protection order if it considers the order to be in the best interest of the applicant.

(2) In determining whether it is in the best interest of the applicant to issue an interim protection order, the court shall take into account-

(a) whether there is a risk of harm to the applicant or a relation or friend of the applicant if the order is not made immediately..." Part III 12

Promising practice: The law of [Namibia](#) requires a court to issue an ex parte order if the court finds that domestic violence has been committed. Section 7 (1)

- Legislation should authorize the issuance of an emergency or ex parte order for protection based upon a court or police order, but without the necessity for a court hearing. The complainant/survivor should be able to approach the court on her own to apply for an order for protection.
- Legislation should state that the statement of the complainant/survivor is sufficient for the court to grant the emergency order for protection. No other evidence should be necessary.

Promising practice: Pakistan's draft [Domestic Violence \(Prevention and Protection\) Act, 2009](#) authorizes a magistrate to issue an "interim protection order" based on the petitioner's application, where it shows "the accused is committing, or has committed an act of domestic violence or that there is a likelihood that the accused may commit an act of domestic violence." The judge may order a protection order, residence order, custody order or monetary relief under Articles 8-10. Lawmakers should ensure that the scope of an order for protection law encompasses dowry-related violence.

- The issuance of the emergency order for protection should occur immediately upon application to support the goal of victim safety. For example, the law of [Bulgaria](#), Ch. 2, S.18, states that:

Where the application or request contains data concerning a direct and impending threat to life or health of the victim, the regional court, sitting ex parte and in camera, shall issue an emergency protection order within 24 hours as from receipt of the application or request. Ch. 2, S. 18 (1)

- If the legislation allows other family members or relevant law enforcement officials or other professionals, such as social service professionals, to apply for emergency or ex parte orders for protection on behalf of a complainant/survivor who is competent, legislation should *require* that the complainant/survivor be consulted. See: the [Addendum to Administrative Procedure Code](#) of Georgia, Article 21.12. In some cases, orders for protection issued without the victim's consent present risks to the victim. Women who are victims of violence are most often the best judges of the dangers presented to them by violent partners. ([Domestic Violence, Explore the Issue, Victim Protection Support and Assistance, Safety Planning](#)) Therefore, it is not advisable to exclude them from the decision to apply for protection measures. This is particularly true since research shows that one of the most dangerous times for many women is when they separate from their abusers. A 2003 study described by a leading domestic violence agency in the United States, the Family Violence Prevention Fund confirmed that "[s]eparating from an abusive partner after having lived with him, leaving the home she shares with an abusive partner or asking her abusive partner to leave the home they share were all factors that put a woman at 'higher

risk' of becoming a victim of homicide." It is very important for an adult victim of domestic violence to make her own decision to leave a relationship because she is in the best position to assess the potential danger.

- The legislation should state that violation of the emergency or ex parte order for protection is a crime. See: the [Elimination of Domestic Violence, Protection of and Support to Its Victims \(2006\) of Georgia](#), (hereinafter law of Georgia) Article 10: *“Failure to comply with the conditions prescribed by protective and restrictive orders shall lead to criminal responsibility of the abuser.”*
- The legislation should state that it is the duty of the police and the prosecutor to enforce the emergency or ex parte order for protection. See: [UN Handbook](#), 3.10.3; law of [Philippines](#), Sec. 30; and [Family Violence: A Model State Code](#), 305, 306. [The Punjab Prevention of Domestic Violence Bill 2003](#) confers responsibility for enforcement on the Station House Officer of the local police station within 24 hours of the order’s issuance (Article 11).
- Legislation should state that the authorities may not remove a survivor from the home against her will. For example, Protection Officers under Pakistan’s draft [Domestic Violence \(Prevention and Protection\) Act, 2009](#) may “if necessary, *and with the consent of the aggrieved person*, assist the aggrieved person in relocating to a safer place acceptable to the aggrieved person, which may include the house of any relative or family friend or other safe place, if any, established by a service provider” (Article 15(c)) (emphasis added).

CASE STUDIES:

India’s [Protection of Women from Domestic Violence Act, 2005](#) states that “[n]otwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same” (Article 17). Lawmakers should use similarly strong language granting the right to reside in the marital home to the victim.

Where shelters are lacking, some governments have incarcerated victims in prisons to protect them from violence. For example, there are no shelters available for victims of “honour” crimes, another form of violence against women and girls, in Jordan, and state authorities often place them in involuntary detention in the Jweideh Correctional and Rehabilitation Center. See: [U.S. Department of State Country Human Rights Report: Jordan](#) (2008); Human Rights Watch, [Honoring the Killers: Justice Denied for “Honor” Crimes in Jordan](#), 2004, pp. 24-27. Drafters should repeal any laws or orders that allow the practice of detaining women victims of violence and provide adequate resources to provide shelters, and arrest the perpetrators, rather than the victims. See: “Honour” Crimes.

- The emergency or ex parte order should remain in effect until the longer-term protective order comes into effect after a full court hearing. Legislation should provide that upon the request of the respondent, a hearing may be promptly scheduled to review the application and to make a determination whether the order should remain in effect. For example, Pakistan's [Domestic Violence \(Prevention and Protection\) Act, 2009](#) requires a hearing within 3 days of the date of application (Article 6). If, however, the court orders the respondent to undergo counseling, the court may schedule the hearing within a 30-day timeframe (Article 6). See: Section on Batterers Treatment Programs. Where counseling is mandated and so delays a hearing, legislation should direct that the court still issue an interim—or ex parte—protection order. Legislation should expressly provide that an interim order is to remain in effect until a hearing and decision on the application.

Contents of emergency or ex parte orders for protection

- The emergency or ex parte order should restrain the violent offender from causing further violence to the survivor, her relatives or other relevant persons.
- The emergency or ex parte order should provide that the police or courts may order the violent offender and his relatives, if necessary, to stay away from the complainant/survivor, her children and her parents (and other people if appropriate) and the places that they frequent.
- The emergency or ex parte order should prohibit the violent offender from contacting the survivor and her parents or from arranging for a third party, including his relatives, to do so.
- The emergency or ex parte order should require the violent offender to vacate the family home, without ruling on the ownership of property, and to provide the survivor with the use of a means of transportation, financial assistance, counseling, shelter fees, mortgage, rent, insurance, alimony and child support.
- The order should prohibit the violent offender from alienating or disposing of dowry and any assets and property enjoyed, used or held by the offender and/or the survivor.
- The emergency or ex parte order should prohibit the husband and his relatives from making any explicit or implicit dowry demands of the survivor or her parents.
- The emergency or ex parte order should prohibit the violent offender and his relatives, if necessary, from purchasing, using or possessing a firearm, acid or any such weapon specified by the court.
- Legislation should provide that emergency or ex parte orders for protection may be issued in both criminal and civil proceedings.

The [UN Model Framework](#), IV, includes these specific provisions for emergency or ex parte orders for protection:

29. The *ex parte* temporary restraining order may:

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

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

Promising Practice: India's domestic violence law authorizes the magistrate to issue a protection order that also prohibits the perpetrator from "alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate" (Article 18(e)).

Post-hearing order for protection remedy

- Legislation should provide for an order for protection remedy that is independent of any other legal proceeding. The order for protection is much like the emergency or interim order for protection, but it should be issued after a full hearing and the order should provide protection and assistance remedies for a longer period of time. The goals of victim safety and offender accountability remain paramount in both types of protective orders. Legislation on orders for protection should provide that:
- The complainant/survivor or the guardian of a minor or legally incompetent complainant/survivor should have standing to apply for an order for protection. If the legislation allows other family members, relevant law enforcement officials, or other professionals, such as social service professionals, to apply for orders for protection on behalf of a complainant/survivor who is competent, legislation should *require* that the complainant/survivor be consulted. (See: law of [South Africa](#), 4(3); law of [Philippines](#), Section 11; and [UN Handbook](#) 3.10.6) Legislation should ensure that the complainant/survivor's wishes are the final factor in determining who may apply for an order for protection, because complainant/survivors are most often the best judge of the dangers presented to them by violent offenders. These dangers may increase when a complainant/survivor applies for an order for protection.
- Legislation should allow a victim to file an application for an order for protection in pending proceedings that involve the victim and perpetrator(s). For example, India's [Protection of Women from Domestic Violence Act, 2005](#) allows a victim to apply for relief "in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act" (Art. 26(1)). The victim may seek such remedy in addition to or along with other relief sought in legal proceedings before a civil or criminal court (Art. 26(2)). The High Court of Chhattisgarh upheld this right in the case where a victim filed an application under the domestic violence law before a family court under Article 12 of the law. The Court ruled that a victim may file an application under the domestic violence law under Article 26 in any pending proceeding (as opposed to Art. 12). See: Lawyers Collective, [Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act, 2005](#), 2008, p. 64.
- The testimony of the complainant/survivor, in court or by sworn affidavit, should be sufficient evidence on its own for the issuance of an order for protection. No further evidence, police reports, medical reports or other reports should be necessary. (See: [UN Handbook](#) 3.10.7; and law of [Bulgaria](#), Ch.1,S.13 (3))
- Legislation should provide for timely hearings on protection orders. For example, the law of [Philippines](#) allows for priority hearings for applications for protective orders. Section 20. India's [Protection of Women from Domestic Violence Act, 2005](#) states that the magistrate should schedule the date of the first hearing

within three days of the court's receipt of the application (Art.12(4)), and to strive to dispose of the application within 60 days of the first hearing (Art. 12(5)).

- Legislation should specify that the violation of an order for protection, emergency or regular, is a crime. See [UN Handbook](#) 3.10.9, and law of [Georgia](#), Article 10.

Promising practices:

The law of [Spain](#), where violation of order for protection triggers a full hearing on increasing aspects of protection for complainant/survivor.

The law of [South Africa](#), which provides that prosecutors may not refuse to institute a prosecution based on a violation of an order for protection, or withdraw a charge based on a violation of an order for protection, unless they have received authorization to do so from a Director of Public Prosecutions. Section 18 (1)

- Legislation should provide for increased penalties for repeat violations of orders for protection. See: law of [Sierra Leone](#), Part III, 19. For example, Pakistan's draft [domestic violence law \(2009\)](#), which states that violation of a protection order or interim protection order by the respondent is punishable by imprisonment between 6 months to one year and a minimum fine of 100,000 rupees to be given to the petitioner. Additional violations result in a prison sentence between one to two years and a minimum fine of 200,000 rupees to be given to the petitioner (Article 13 (1), (2)).

Promising Practices:

India's domestic violence law makes a violation of an order for protection a cognizable and non-bailable offense. In charging the offense, the magistrate may also bring charges under Section 498A of the Penal Code, Husband or relative of husband of woman subjecting her to cruelty, if the facts support it. Importantly, the court may find that a violation of an order for protection occurred based upon the sole testimony of the victim (Articles 31, 32). India's domestic violence rules allow a victim to report a violation of a protection order to the Protection Officer, judge or police. A victim may seek the assistance of a protection officer in seeking help from the police and filing a police report in cases of violations of protection orders (Article 15(1), (4)-(5)).

The [United Kingdom Protection from Harassment Act \(1997\)](#), which allows a court to place a restraining order on the defendant even if he is acquitted of a criminal offense, in order to offer protection to the survivor. This allows the use of evidence in a criminal court which would normally be admissible only in a civil court under UK law, thereby extending further protection to complainant/survivors. Sec. 5 See: [Combating violence against women: Stocktaking study on the measures and actions taken in Council of Europe member states](#) (2006).

Content of post-hearing orders for protection

- Legislation on the contents of orders for protection should describe a wide range of remedies to ensure safety and assistance to complainant/survivors. Because the violence is connected with demands for goods and cash, an order for protection in dowry-related violence should also address this economic component. The order should prohibit the violent offender and his relatives from alienating or disposing of dowry and any assets and property enjoyed, used or held by the offender and/or the survivor. The order should prohibit the husband and his relatives from making any explicit or implicit dowry demands of the survivor or her parents.
- Legislation should ensure that orders for protection inform the complainant/survivor of criminal and civil remedies, including tort laws on compensation, in addition to the order for protection. See: The [UN Model Framework](#), 3.10.2.
- Legislation on orders for protection should allow relief based on what the court deems necessary in order to protect the safety of the complainant/survivor or the family of the complainant/survivor. See: the [Domestic Violence Act \(1998\) of Guyana](#), (hereinafter law of Guyana) Part II 7 (f); the [Domestic Violence Act \(2006\) of Zimbabwe](#), (hereinafter law of Zimbabwe) Section 11, (1) (i).

Promising practice: The law of [Namibia](#) states that, when determining the contents of a protection order, a court must consider, among other factors, the history of domestic violence by the respondent towards the complainant and the complainant's perception of the seriousness of the respondent's behavior. These factors may be important predictors of serious harm to complainant/survivors. Part II 7 (4)(a) and (d).

- In addition to allowing courts to consider a history of domestic violence, laws should ensure that courts may consider any correlating history of dowry demands by the offender and his relatives, all dowry and gifts from the bride's family to the offender or his relatives from before, at and after the wedding, and, where applicable, the registered list of gifts from the bride's family to the offender or his family. See: Lethality or risk assessments; Registration of Gifts.
- Legislation should contain provisions which prohibit the violent offender and his relatives from further violence or from threatening to commit further violence, from contacting or going near the complainant/survivor and her dependents, from accessing the family home, and from possessing or purchasing a firearm or acid.

Promising practice: [On Measures Against Violence in Family Relations \(2006\) of Albania](#) (hereinafter law of Albania), in which content of orders for protection includes the following provision on firearms:

g) ordering the law enforcement officers to seize any weapons belonging to the perpetrator, found during police checks, or ordering the perpetrator to surrender any weapons belonging to them; Ch III, Article 10, 1 (g)

The law of [Guyana](#) contains the following provision on the content of orders for protection:

6. (1) *Subject to this Act, a protection order may-*

- (o) *prohibit the respondent from being on premises in which a person named in the order resides or works;*
- (p) *prohibit the respondent from being on premises that are the place of education of a person named in the order;*
- (q) *prohibit the respondent from being on premises specified in the order, being premises frequented by a person named in the order;*
- (r) *prohibit the respondent from being in a locality specified in the order;*
- (s) *prohibit the respondent from engaging in harassment or psychological abuse of a person named in the order;*
- (t) *prohibit the respondent from speaking or sending unwelcome messages to a person named in the order;*
- (u) *direct the respondent to make such contribution to the welfare of a person named in the order as the court thinks fit;*
- (v) *provide for custody and maintenance of children;*
- (w) *prohibit the respondent from taking possession of specified personal property, being property that is reasonably used by a person named in the order;*
- (x) *direct the respondent to return specified personal property that is in his possession or under his control which belongs to a person named in the order;*
- (y) *prohibit the respondent from causing another person to engage in the conduct referred to in paragraph (e), (f) or (i);*
- (z) *specify conditions subject to which the respondent may be on premises or in a locality specified in the order;*
- (aa) *direct the respondent to do or to refrain from doing any other act or act which the court in the circumstances of the case considers relevant;*
- (bb) *provide that the respondent seek appropriate counseling or therapy from a person or agency approved by the Minister, by notice published in the Gazette.*

(2) *The court may make an order that includes a prohibition of the kind referred to in subsection (1)(a) or (i) notwithstanding any legal or equitable interests the respondent might have in the property comprising the premises or in the property to which the prohibition of the kind referred to in subsection (1)(i) relates.*

- Legislation should also include provisions which make it possible for a complainant/survivor to live independently from the abuser. Such provisions include granting the court or the police the authority to order the use of an automobile or other personal effects to the complainant/survivor. Legislation should allow courts to be able to order financial assistance in the form of mortgage, rent, insurance, alimony and child support.

- Laws should allow courts to prohibit the violent offender from alienating or disposing of dowry and any assets and property enjoyed, used or held by the offender and/or the survivor. Courts should also have the authority to prohibit the husband and his relatives from making any explicit or implicit dowry demands of the survivor or her parents.

The law of [India](#) contains the following provision:

Monetary relief.-(1) *While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-*

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Ch. IV, 20

- Legislation should include provisions which consider medical bills, counseling or shelter fees.

Promising Practices:

The Magistrate Court in India ruled on an appeal by a husband and his family seeking reversal of the petitioner's application under India's domestic violence law. Her application resulted in a residence order removing the respondents from the shared household. The household, however, was in the petitioner's mother-in-law's name, and the respondents alleged that the residence did not constitute a "shared household" for purposes of the domestic violence law. The court, however, found that the husband transferred title of the residence to his mother's name to defeat his wife's right to the home. It acknowledged that both parties had lived jointly in the household prior to the petitioner's dispossession of the home. P. Babu Venkatesh & Ors. V. Rani, MANU/TN/0612/2008, as cited in Lawyers Collective, [Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act, 2005](#), 2008, p. 62.

[Spain's](#) law requires that judges who hear Orders for Protection must receive training on issues of child custody, security, and economic support for survivors and their dependants.

See: [UN Model Framework](#), I 2 (k); and [Role of the Judiciary](#), StopVAW, The Advocates for Human Rights.

- For a detailed list of legislative provisions of an order for protection, see [Family Violence: A Model State Code](#), Sec. 204, Sec. 305, 306; and [UN Model Framework](#), IV B.
- For an example of a form, see [Family Violence: A Model State Code](#), Sec. 302.

The law of [Philippines](#) includes a provision that requires standardized forms for orders for protection.

Warning provisions

Legislation should specifically preclude the use of warnings as a prerequisite for filing for a protection order, or be required as required evidence for obtaining a protection order.

Legislation should specifically preclude the use of warnings to violent offenders as a part of the police or judicial response to domestic violence and dowry-related violence. Warnings do not promote offender accountability or communicate a message of zero tolerance for violence. See: [Duties of police officers](#) and [Duties of judiciary](#), below.

Time limits on orders for protection

- Legislation should provide that orders for protection may be left in place for a minimum of one year.
- Ideally, a protection order should be left in place permanently, and only terminated by a finding by a court, based on clear evidence, that there is no longer any danger to the complainant/survivor or that the demands for dowry will cease. That way, a complainant/survivor does not have to appear in court and possibly confront her abuser on a regular basis. The law should state that the termination of an order for protection must be the responsibility of the court.
- The law of [Minnesota](#), USA, allows orders for protection to be extended for up to 50 years in certain situations:

Relief granted by the order for protection may be for a period of up to 50 years, if the court finds: (1) the respondent violated a prior or existing order for protection on two or more occasions; or (2) the petitioner has had two or more orders for protection in effect against the same respondent. Subd.6a (b)

Promising practice: The [Protection of Women from Domestic Violence Act \(2005\) of India](#) states that a protection order shall be in force until the complainant/survivor applies for discharge, or until the Magistrate, upon receipt of an application from the complainant/survivor or the respondent, is satisfied that there is a change in the circumstances, requiring alteration, modification or revocation of the protection order.

- Ch. IV, 25. Likewise, the Pakistan draft [Domestic Violence \(Prevention and Protection\) Act, 2009](#) also states that a protection order is to remain in effect until the victim applies for its discharge or until the court receives information from the victim or accused that that circumstances have changed to merit alteration, modification or revocation. Either of those two circumstances would not, however, prevent a victim from applying for a new protection order after discharge of a previous one (Article 12).

Other key provisions in legislation on post-hearing orders for protection

Legislation on post-hearing orders for protection should:

- Not allow officials to remove complainant/survivor from her home against her will.
- Not allow for mutual orders for protection. A mutual OFP implies that both parties are responsible for the violence and it makes both parties liable for violations of the order. Advocates found that police faced with a mutual order often did not determine who was the primary aggressor and consequently either failed to enforce the order or arrested both parties. When a mutual OFP was enforced against a complainant/survivor, the consequences were dire: the complainant/survivor might lose child custody or her employment, or be evicted by a landlord. (See: [The Toolkit to End Violence Against Women](#), Ch. 3; StopVAW, The Advocates for Human Rights)
- State that the offender may not obtain a mutual order for protection against the complainant/survivor for economic violence because she or her family has failed to meet the demands for dowry (where order for protection laws include “economic violence” in domestic violence definitions).

See: [UN Handbook](#) 3.10.8.1; and [Family Violence: A Model State Code](#), Sec 310.

- Not allow officials to cite complainant/survivors for “provocative behavior.” See: [UN Handbook](#) 3.10.8.1.
- Orders for protection should be effective and enforceable throughout a country.

Promising practices: The law of [Philippines](#) has a provision which mandates that orders for protection are enforceable throughout the nation. The law of [India](#) likewise contains a provision that states that an order for protection is enforceable throughout the country (Article 27(2)).

- Orders for protection should be part of a national registration system so that police and law enforcement personnel can quickly and efficiently determine the existence of the order. See: [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009. IV, 16 (h)

- Legislation should not contain any references to mandatory treatment for rehabilitation of complainant/survivors. Rather, legislation should provide for counseling services for a complainant/survivor if she determines she needs them. Many domestic violence complainant/survivors do not need psychiatric counseling or rehabilitative services, with the exception of employment services. Rehabilitation services which are offered to victims are provided only at the request of the victim. These services should never be compulsory or imposed on victims by government agencies or officials. Counseling should not be a requirement in domestic violence cases involving child custody. Laws should not use counseling to mediate or resolve the matter between the parties. Laws should not make counseling a precondition to obtaining an order for protection remedy from the court.
- Legislation should provide that a complainant/survivor may seek a protection order without the aid of an attorney. Laws should also address the role of advocates. See: Section on Advocates.

Promising Practice: Laws that define the role of advocates and provide complainant/survivors with advocate assistance and access to a standardized application form will facilitate her access to protection orders. India's [Protection of Women from Domestic Violence Rules, 2006](#) include Form II, a template application form to the magistrate, which allows the applicant to check the forms of relief she is seeking. Form I is a template domestic incident report form, which provides sections for documenting different forms of domestic violence, as well as the date, place and time; perpetrator of the domestic violence; types of violence and other remarks. A section on dowry-related harassment is included, requesting details on demands for dowry made, other dowry details and allows for the applicant to append a description of dowry items and stridhan to the form. Standardized forms such as these that prompt the applicant on details of the violence, including background on dowry, will help facilitate the protection order process.

Child custody provisions in orders for protection

- Legislation should include a provision that grants temporary custody of minor children to the non-violent parent. For example, the law of [Bulgaria](#) allows the court to do the following:

temporarily relocating the residence of the child with the parent who is the victim or with the parent who has not carried out the violent act as stake, on such terms and conditions and for such a period as is specified by the court, provided that this is not inconsistent with the best interests of the child. h 1, S. 5 (1) 4

- The legislation should contain a presumption that visitation by the violent parent should be supervised, and should not occur if it is against the will of the child. See: law of [Spain](#); [UN Handbook](#) 3.10.8.2, and 3.13; and [OFPs and Family Law Issues](#), StopVAW, The Advocates for Human Rights.

- For example, the law of [Sierra Leone](#) states that a protection order may contain:

(f) a provision temporarily-

(i) forbidding contact between the respondent and any child of the applicant;

(ii) specifying that contact between the respondent and a child of the applicant, must take place only in the presence and under the supervision of a social worker or a family member designated by the court for that purpose; or

(iii) allowing such contact only under specified conditions designed to ensure the safety of the applicant, any child who may be affected, and any other family members;

if the court is satisfied that that is reasonably necessary for the safety of the child in question; Part III 15 (f)

See: law of [Namibia](#).

- Drafters should enact separate laws on child abuse rather than attempt to address it within the domestic violence legislative framework. See United Nations Economic and Social Council, Intergovernmental Expert Group Meeting to Review and Update the 1997 Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, [Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#), Bangkok, 23-25 March 2009, II 14 (d).

Family law and divorce

- Legislation should guarantee women and men equal rights to enter into marriage; equal rights to choose a spouse and enter into marriage only with the free and full consent of both parties, and; equal rights and responsibilities during marriage and at its dissolution. See: Forced and Child Marriage.

Promising Practice: [Global Rights has worked with women in the Maghreb region](#) to use the marriage contract to negotiate and protect their rights in marriage and at its dissolution. The project sought to empower women to demand a written marriage contract that incorporates protections of their rights, use these contracts as a litigation tool in the court system, promote the use and validation of marriage contracts, provide advocates with a model contract to lobby for the adoption of a government-mandated standard marriage contract to protect women's human rights. A report highlighted some of key clauses on property that should be included in a marriage contract, including:

- Requiring registration of all assets acquired during marriage in both parties' names;
- Guarantee the woman's right to freely manage and dispose of her own property, which includes her salary, inheritance, jewelry, gold, dower, stridhan, and all other property she brings with her to the marriage and household;
- Include a documented list of the woman's personal property;
- Providing for equal distribution of these joint assets in the event of divorce, based on the percent of each party's contribution (which includes women's unpaid domestic work);
- Provide the right to remain in the family home to the woman and the children upon dissolution of the marriage, including divorce and death of the husband. Where the home is rented and the woman has no fixed income, the husband should pay this rent;
- Provide a fixed amount of child support for the children, including a deadline and payment schedule, that takes into account the husband's income at the time of divorce, the children's standard of living before divorce, and a provision to increase the child support as needed to meet their growing needs;
- Provide a fixed amount of alimony for the wife, including a deadline and payment schedule that takes into account the husband's income at the time of divorce and the standard of living before divorce.

See: [Conditions, Not Conflict: Promoting Women's Human Rights in the Maghreb through Strategic Use of the Marriage Contract](#), Global Rights, 2008.

- Legislation should provide equal rights for women for divorce and for adequate alimony for spouses and children. See: the [Maputo Protocol](#), Article 7

CASE STUDY: Legislation should always ensure that women are guaranteed equal rights in dissolution of marriage. Conflicting legislation should be resolved in favor of advancing women's human rights. Pakistan's 1964 Family Courts Act and 1939 Dissolution of Muslim Marriages Act impose different requirements on a woman seeking a divorce. Under the 1939 Dissolution of Muslim Marriages Act, a woman may file for divorce based on nine grounds, such as cruelty. If none of the nine grounds are present, a woman may still file for divorce under the Family Court Act. In this case, however, she is required to return any dowry—or gifts to her from her husband—to her husband. In cases where that gift has been sold, used, or transferred, she will be unable to obtain a divorce under this act. The same requirement to return dowry as a condition for divorce, however, does not apply to the husband under the Family Court Act.

- Legislation should provide for the complainant/survivor's right to stay in the home after the divorce.
- Legislation should provide for social insurance and pension rights for complainant/survivors.
- Legislation should ensure equal rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Promising Practice: The Lawyer's Collective Women's Rights Initiative cites to the Goa system governing matrimonial property as a potentially good strategy for protecting women's property rights upon divorce. Using the communion of acquired properties model, both parties register their separate properties, including the property owned by each spouse at that time or property gained through succession, gifts or a preexisting exclusive right, at the time of marriage. Such property belongs to the person as registered. Unregistered, separate property at the time of marriage, and all property acquired during the marriage, becomes community property, is jointly owned by both parties and is divided equally in the event of divorce. See: Jhuma Sen, [Whose Property Is It Anyway? Property Rights of Married Women in India](#), The Magazine, Lawyer's Collective, November 2009.

- Legislation should provide for expedited distribution of property in divorce cases involving domestic violence. Laws should ensure that stridhan and any dowry or gifts given by the woman's family is given to her in the event of divorce. Laws should broadly define dowry as any property, goods, cash or valuable security given either directly or indirectly by one spouse or the spouse's relatives to the other spouse or spouse's relatives prior to, at or after the marriage.
- Legislation should mandate careful screening of all custody and visitation cases to determine if there is a history of domestic violence or dowry-related violence.

- Drafters must consider the dynamics of domestic violence and dowry-related violence and harassment when drafting laws and regulations on custody and visitation.
- Drafters must ensure that existing laws on child custody and other family law provisions focus on safety of the complainant/survivor and the best interests of the child in dowry-related violence cases. All provisions should be amended to reflect this focus.
- Child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers. See: CASE STUDY: Guidelines for Domestic Violence Cases with Child Witnesses below.

See: [UN Handbook](#), 3.13.

- The [Children's Law Act \(1990\)](#) of Newfoundland, Canada states: (3) *In assessing a person's ability to act as a parent, the court shall consider whether the person has ever acted in a violent manner towards (a)his or her spouse or child; (b)his or her child's parent; or (c)another member of the household...*Article 31
See: [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005).

Custody

Legislation should expressly guarantee equal parental and guardianship rights to both parents.

CASE STUDY: Drafters should amend laws that deny equal parental and guardianship rights on their face or in practice. For example, in *Geeta Hariharan v Reserve Bank of India*, the Supreme Court ruled on the constitutional validity of the [Hindu Minority and Guardianship Act](#) and whether it denied equal guardianship rights to women. Article 6 discriminates against women and states:

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are –

- a. in the case of a boy or an unmarried girl-the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;*
- b. in case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;*
- c. in the case of a married girl-the husband.*

The Supreme Court interpreted Article 6, however, as stating the mother and father are natural guardians of their children. (See: [Women's Rights Initiative](#), Lawyers Collective). Laws should unequivocally guarantee this equality.

- Legislation should state that in every proceeding where domestic, dowry-related or family violence has occurred between the parents or between the daughter-in-law and her parents-in-law, there is a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of the violence. Where there is a dowry death or dowry-related violence between the daughter-in-law and her parents-in-law, this rebuttable presumption concerning the child should extend to the woman's parents-in-law. This presumption should extend to cases involving orders for protection, juvenile delinquency and child protection.
- Legislation should require the court to consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence.
- Legislation should require the court to consider the perpetrator's history of causing physical or psychological harm or causing the reasonable fear of physical or psychological harm to family members. Legislation should require the court to consider the history of demands and other harassment for dowry.
- Legislation should mandate that the absence of a parent from a court proceeding because of domestic or dowry-related violence, or the relocation of a parent due to domestic or dowry-related violence, are not factors which weigh against the absent parent in determining custody or visitation.

(See: [Family Violence: A Model State Code](#) (1994), USA, Sec. 401 and 402)

- For example, the Guardianship Amendment Act (1995) of New Zealand includes a presumption against giving custody or unsupervised access to a party who has used violence against a child or the other party to the proceedings unless the court was sure that the child would be safe from violence. A protective order under the [Domestic Violence Act \(1995\) of New Zealand](#) would trigger this presumption. See: [Deserving of Further Attention: A Case Streaming Approach to Child Custody and Access in the Context of Spousal Violence \(2005\)](#)

Residence of child

- Legislation should state that in every proceeding where domestic, dowry-related or family violence has occurred between the parents or between the daughter-in-law and her parents-in-law, there is a rebuttable presumption that it is in the best interest of the child to reside with the parent who did not perpetrate the violence in the location of that parent's choice.
- In cases of dowry deaths or suicides as a result of dowry demands or violence, laws should provide for a rebuttable presumption that it is not in the best interest of the child to reside with the perpetrators or his relatives who demanded or received dowry from the victim's family. This presumption should extend to cases involving orders for protection, juvenile delinquency and child protection.

See: [Family Violence: A Model State Code](#) (1994), Sec. 403.

Competing statutory provisions

Legislation should provide that where there are statutory provisions which would compete with the rebuttable presumptions described above, for example a “friendly parent” provision, which favors a parent who will foster frequent contact with the other parent, or a provision that provides for the presumption of joint custody, these provisions shall not apply to cases involving domestic violence, dowry-related violence or dowry deaths. Legislation should provide that where there are statutory provisions which would compete with the rebuttable presumptions described above, for example placing custody of the child with the husband’s parents, these provisions shall not apply to cases involving dowry-related violence or dowry deaths.

See: [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005); [Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns](#) (Rev. 2007).

Parental alienation syndrome

Legislation should state that “parental alienation syndrome” is not admissible as evidence in hearings on child custody or visitation. “Parental alienation syndrome” is a term for a situation in which one parent is accused of alienating a child from the other parent. In situations of domestic abuse, behavior that is reasonable to protect a child from abuse may be misinterpreted as a sign of instability. See: [What is Parental Alienation Syndrome](#), The Leadership Council on Child Abuse and Interpersonal Violence last acc. 2/9/10.

Visitation

Legislation should state that visitation may be awarded to a parent who committed domestic or dowry-related violence only if the court finds that adequate provision for the safety of both the child and the parent who is a victim of domestic or dowry-related violence can be made. Legislation should include the following options for providing safety to a child and victim parent where there has been domestic violence or dowry-related violence:

- The court may order the exchange of a child to occur in a protected setting.
- The court may order that the visitation be supervised by another person or an agency.
- The court may order the perpetrator to pay a fee to defray the costs of supervised visitation.
- The court may order the perpetrator to abstain from possession of alcohol or controlled substances both during the visitation and for 24 hours preceding the visitation.
- The court may prohibit overnight visitation.
- The court may require a bond from the perpetrator of domestic violence for the return and safety of the child.
- The court may impose any other condition that is deemed necessary for the safety of the child, the complainant/survivor, or other family members.

See: [Family Violence: A Model State Code](#) (1994), Sec. 405.

Confidentiality of address

- Legislation should state that the court, whether or not visitation is allowed, may order the address of the child and the complainant/survivor to be kept confidential. Laws should also require that advocates, protection officers and police maintain the confidentiality of the address of the child and the complainant/survivor.
- Also, legislation should provide money and guidelines on infrastructure to protect victim privacy. For example, the Lawyers Collective found that Protection Officers lacked a separate office space, thus compromising victims' privacy. [Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act, 2005](#), 2008, p. 22.

See: [Family Violence: A Model State Code](#) (1994), Sec. 405.

CASE STUDY: Guidelines for Domestic Violence Cases with Child Witnesses

Many incidents of domestic violence occur with children as witnesses. This exposure is a matter of continuing concern to child protection and child welfare professionals, as well as domestic violence service providers and domestic violence complainant/survivors. While children exposed to domestic violence may be negatively impacted by such exposure, there are many steps that can be taken which can ameliorate these possible impacts.

Beginning in 2000, in the Canadian province of British Columbia, a collaborative inter-agency group developed and began to implement [Best Practice Approaches: Child Protection and Violence against Women](#) (updated 2010) (hereinafter "Best Practices"). The group included practitioners and administrators from governmental agencies, medical centers, and non-governmental organizations. These guidelines draw upon research and expert documents developed in the Canada, the UK, and the US from 1995 to 2000, with the aim of helping those working in child protection and child welfare services to better understand the impact that exposure to domestic violence was having on children, and to train child protection service providers in the dynamics of intimate partner violence.

"Best Practices" is based upon the core assumption that, in situations of domestic violence, the child's safety is interconnected with the safety of the complainant/survivor, who is most often the child's mother. To protect the child, steps must be taken to protect the mother, by providing safe and supportive services in a non-punitive, non-judgmental manner.

The report provides advocates with detailed practice options for different situations of domestic violence. For example, it prompts the advocate to ask about the level of danger in the home, if firearms are present, the nature of any threats, and if the mother is fearful for her own or her children's safety.

- The response of the child protection system must be based upon a well-trained child protection worker's assessment of the circumstances of the totality of the case. If an investigation or intervention is required, the report offers practice tips for child protection service providers that support the safety of the mother, such as safe methods of contacting her, or the best way to arrange a meeting. (p. 13)
- If there is an immediate concern for the safety of the children, "Best Practices" offers a series of steps for child protection service providers to take that reflect concern for the children, and at the same time, reflect respect for the person/caregiver who has been keeping the children safe to date. It suggests that caseworkers:
 - Explain reasons for the concern to the woman in a direct, non-blaming manner.
 - Elicit the woman's and the service provider's suggestions for a safety plan for the children.
 - Develop a safety plan that tries to keep the child with the mother if possible by focusing on her safety, her strengths, and supportive resources.
 - Explore how finances, threats and other issues might impact her options. (p. 14)
- Effective intervention depends upon multi-agency, collaborative and integrated efforts that include battered women's programs, child protection workers, law enforcement and the court system working together with the safety of the child and the mother at the forefront. "Best practices" concludes that the child and mother benefit the most when the violent offender is removed from the home and held accountable for the violence, not by separating the child from the mother.

For assessment guidelines on evaluating the risks from batterers who profess to have changed, see [Assessing Risk to Children from Batterers](#) (2002).

See: UK: [Tackling Domestic Violence: Providing Support for Children who have Witnessed Domestic Violence](#); USA: [Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice](#) ; [Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother](#) (2005).

Civil lawsuits for damages and compensation

- Laws should provide victims and their heirs a civil tort remedy in cases of dowry demands, violence, harassment and death. Legislation should provide dowry-related violence victims with a civil tort remedy for claims of assault, battery, false imprisonment, intentional or reckless infliction of emotional distress, intentional interference with child custody, visitation or parent-child relationship, extortion, third-party negligence and wrongful death. See: Brian K. Zoeller and Patrick Schmiedt, [Suing the Abuser: Tort Remedies for Domestic Violence](#), *Victim Advocate*, Spring 2004.
- Laws and the judiciary must allow for flexibility in tort and domestic violence laws that take into account the dynamics of domestic violence and battered women's syndrome, a form of post-traumatic stress disorder. See: [Health Effects of Domestic Violence](#), The Advocates for Human Rights. Laws should allow a victim to sue for all violent acts in one cause of action by stating that the statute of limitations does not start until the domestic violence stops entirely. In *Giovine v. Giovine*, a New Jersey appellate case, the victim filed a tort action against her abuser. Because the case involved a long history of violence, separations and reunions over several years, the defendant alleged the statute of limitations barred all actions as a defense. Importantly, the court recognized that the statute of limitations may be tolled if the plaintiff can show she suffered from battered women's syndrome that prevented her from taking action to change her marital circumstances. Thus, all acts of violence could comprise a single cause of action for which the statute of limitations would not begin until the last act of violence. See: 663 A.2d 109, 118 (N.J. Super. Ct. App. Div 1995).

Ensure women's property and inheritance rights

- Legislation should require a comprehensive review of all formal and customary laws to ensure women have an equal right to housing, land and inheritance rights. Laws should explicitly allow females to inherit property and should mandate that customary systems grant women equal inheritance rights. Inheritance laws should ensure equality between males and females' right to inheritance in cases of intestacy. Legislation should create and support enforcement and monitoring mechanisms, such as a police unit, to facilitate women's inheritance claims. Legislation should include public awareness programs aimed at educating rural and urban women and girls on their rights, remedies and how to enforce them. Legislation should require studies on inheritance laws and practices throughout the country to understand the nature and extent of discrimination against women and girls in inheritance and property rights. (See: COHRE, [Women and Housing Rights Issue Brief 7](#), p. 8. See: Maltreatment of Widows; Harmful Practices)

Promising Practice: Laos, Philippines and Vietnam have inheritance laws providing equal inheritance among all children in intestacy, regardless of sex. The laws also provide for the surviving spouse to inherit equal shares with children. See: Anna Knox, Nata Duvvury, Noni Milici, [Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women's Property Rights](#), ICRW (2007).

- Legislation should vest all dowry, bridal gifts and property gifted to the bride in her name. For example, Pakistan's Dowry and Bridal Gifts (Restriction) Act (1976) states that "all property given as dowry or bridal gifts and all property given to the bride as a present shall vest absolutely in the bride and her interest in property however derived shall hereafter not be restrictive, conditional or limited" (Article 5). '
- In the case of a dowry death, inheritance laws should mandate that the victim's property, including her dowry, be passed to her children to be held in trust for them until they are of legal age. Where there are no children, inheritance laws should provide that the victim's property be passed to her parents.
- Legislation should ensure that women have equal rights to occupy, use, own and inherit land and other commodities; there is an equitable distribution of property upon dissolution of a marriage, and; women can be the beneficiaries of land tenure reform. See: [Good Practices in Legislation on "Harmful Practices" against Women](#), UN DAW (2009), Section 3.7.1.2.

Other provisions related to dowry-related and domestic violence laws

Public awareness and trainings

- Laws should mandate public awareness campaigns and trainings for different sectors and groups. In particular, legislation should mandate training for religious, customary, community tribal leaders, state-registered preachers and religious officials on women's human rights, dowry-related violence, domestic violence, and seek their commitment in denouncing violence against women. Legislation should mandate the training of all health professionals, including maternity, obstetrics, gynecology, reproductive health, and medical examiners on women's human rights, dowry-related violence, domestic violence, and guidelines on how to identify, provide referrals, and sensitively and appropriately treat survivors/complainants of dowry-related violence. Legislation should mandate the training of teachers in primary, secondary and higher education schools to promote women's human rights and denounce violence against women, including dowry-related violence and deaths. See: UN DAW Expert Group Meeting, [Good Practices in Legislation on "Harmful Practices against Women"](#) (2009), Sections 3.2.2, 3.2.3, 3.2.4. Laws should also sensitize the media and journalists on violence against women, including dowry-related violence and deaths. See: [UN Handbook](#), Section 3.5.4.
- Legislation should mandate government support and funding for public awareness activities on violence against women, including dowry-related violence and deaths. The [UN Handbook](#) recommends general campaigns to educate the public about violence against women as discrimination and a violation of women's human rights, as well as specific educational campaigns to increase public understanding of laws and the remedies regarding violence against women (Section 3.5.2).
- In addition to focusing on women's human rights and dowry, public awareness and trainings should address women's inheritance and property rights and women's rights in marriage and at its dissolution.

Promising Practice: The Asian Women and Human Rights Council has organized a series of Courts of Women to promote discourse and hear individual testimonies of violence against women and human rights. A planning workshop took place 18 months prior to the court, where participants discussed key issues and identified key participants for further work. The council, along with forty other organizations, held the India Court of Women on Dowry on July 27-29, 2009. The court heard testimony from 25 victims of dowry-related violence from across India. While the court has no legal authority, it was a visible campaign to bring attention to the experiences of victims of dowry-related violence. See: <http://www.awhrc.in/>; [India Court of Women on dowry and violence](#), Thaindian News, Sept. 26, 2009.

Addressing dowry-related violence through regulation and registration of dowry

Drafters should provide regulations regarding dowry. Legislation should establish both a marriage registration system and a registration system for gifts made before, at anytime after the marriage from either party's family to the bride, groom, both bride and groom, and their family members. Both parties should be required to document all gifts received and describe each gift, the value, the date made, the name of the giver, to whom the gift is made, each sign or thumbprint each of the lists, and file the lists with an official office or court authorized to accept these documents. Parties should append any additional gifts or dowry made and received to this record. Legislation should also provide a mechanism for parties to document dowry demands, whether explicit or implicit, and whether and how they were met.

CASE STUDIES:

Legislation should ensure that all gifts before, at and anytime after the marriage are recorded in writing. India has developed the [Dowry Prohibition \(Maintenance of List of Presents to the Bride and Bridegroom\) Rules](#), which state that all presents given at the time of marriage to either the groom or bride must be listed by each in writing, with a description, an approximate value, the name of the giver and relationship to the parties if applicable, and the signatures of both parties.

Both India and [Bangladesh](#) have laws that prohibit dowry, but allow for voluntary gifts. For example, [Bangladesh's Dowry Prohibition Act \(1980\)](#) penalizes both the giver and taker of dowry equally, imposing sentences of one to five years and/or a fine (Articles 3, 4). [India's Dowry Prohibition Act \(1961\)](#) equally penalizes the giver, taker and abettor of dowry by a maximum sentence of five years' imprisonment and a fine (Article 3). Legislation should penalize the taker and abettor of dowry, but not penalize the giver of dowry. Penalizing the giver may deter victims from reporting the crime or seeking help, particularly where it incriminates the victim's family members. Parties who are coerced into giving dowry to stop violence against the bride can be held as culpable as the takers who demand the dowry and/or commit violence against the bride. The Lawyers Collective has made legal reform recommendations to India's dowry law:

*The definition of dowry in the Act can be modified to do away with the gender neutral definition of dowry and to benefit the bride and the bride's family. The amended Section 2 should read as- "dowry means any property or valuable security given or agreed to be given either directly or indirectly **by the bride or the bride's family to the bridegroom or the bridegroom's parents or family** at or any time after the marriage in connection with the marriage of the said bride and groom but does not include dower or mahr in case of persons to whom the Muslim Personal Law (Shariat) applies". Section 3 of the Act could be amended so as **not to penalize the giving of dowry but to make punishable the act of taking or abetting the taking of dowry**. Section 6 should have a provision for the **return of all dowries** given by the bride or the bride's family at or any time after the marriage in connection with the marriage.*

*Apart from the specific changes in the legislation, all the gifts given to the bride, the bridegroom and given jointly to the bride and the bridegroom should be **mandatorily registered** as per the rules laid down in the Dowry Prohibition Act. A **definite exception should be carved out for the genuine gifts given to the bridegroom** by the bride or the parents or relatives of the bride. However, such gifts must be of a customary nature and the value of such gifts should not be excessive considering the financial status of the person by whom or on whose behalf such presents are given. **All presents given to the bride** by the **parents of the bride** shall **exclusively belong to the bride** and will be treated as her property. **All presents given to the bride** by the bridegroom and/ or the family of the bridegroom shall be exclusively treated as belonging to the bride and will be treated as her property. **All presents given to the couple jointly** by strangers shall belong to the bride and the bridegroom jointly and will be treated as their joint property.*

See: Paroma Ray, [Discussions on Dowry](#), Lawyers Collective Women's Rights Initiative.

- Rather than prohibit dowry, drafters should consider whether to enact legislation that draws upon the outcomes in the dowry prohibition laws. Where there is a finding of domestic violence, extortion, infliction of injury or fear of injury to oneself or a third party to exact dowry, title and ownership of dowry given to the husband or in-laws should shift to the woman victim. In these cases, the recipient of the dowry merely holds the dowry in trust for the woman until its eventual transfer to the woman within a specified time period. Under the Indian Penal Code, a person may be held guilty of criminal breach of trust if he “dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied...” (Article 405). An accessible dowry registration system and public outreach to facilitate its use would be imperative. Alternatively, drafters should provide for a civil compensation scheme for victims to seek redress where there is a finding of domestic violence, extortion, infliction of injury or fear of injury to oneself or a third party to exact dowry. In cases where the dowry has been sold, depreciated, or exhausted, a civil compensation scheme may be the more realistic option. Again, documentation through a registration system is an important measure for implementation.

Regulation of acids and other harmful substances

Legislation should regulate the sale of any type of acid. See: UN DAW Expert Group Meeting, [Good Practices in Legislation on “Harmful Practices against Women”](#) (2009), Section 3.3.6.2. For example, Bangladesh’s [Acid –Offences Prevention Act 2002](#) defines acid as “any substances, burner caustic and poisonous” (Article 2(b)). The act punishes inflicting hurt or death by acid, acid throwing and attempts to throw acid, and abetting any of these offenses by imprisonment and a fine (Articles 4-7). Article 9 states that fines garnered from this law are to be remitted to the “successor of the person died [in] consequence of the offence otherwise to the person being injured physically or mentally or to the successor if dead, after realizing it from the person convicted or from his assets or by realizing from the assets left at the time of his death.” The Bangladesh Parliament has also enacted the Acid Control Act (2002), which criminalizes the unlicensed production, import, transport, storage, sale, and use of acid and imposes a prison sentence of 3-10 years. Individuals in possession of the chemicals and equipment for the unlicensed production of acid are subject to the same penalty.

CASE STUDY: The [U.S. Drug Enforcement Administration \(DEA\) released regulations](#) to implement new restrictions for products containing ephedrine, pseudoephedrine, and phenylpropanolamine (PPA). These restrictions seek to reduce access to products used to manufacture the illegal drug methamphetamine and may serve as guidance for drafters seeking to regulate other substances. These restrictions apply to all sellers of the products, impose daily and monthly sales limit of the products on sellers, limit monthly purchases for buyers, require sellers to store products in a locked cabinet or behind the counter, and require sellers to maintain a logbook of all sales, including quantity of product and form sold, purchaser name and address, date and time of sale, and purchaser’s signature; the buyer records his or her name and address, date and time of sale, and his or her signature in the logbook.

Advocating for New Laws or the Reform of Existing Laws

Throughout this knowledge asset, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a good example or a promising practice.

Some of the laws cited herein may contain provisions which authorize the death penalty. In light of the United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

What is advocacy and why is it important?

Identifying the problem: investigating and gathering evidence

The advocacy process

Understanding the government structure, legal obligations, and legislative process

Taking action

After the campaign: now what?

Tools

What is advocacy and why is it important?

What is an advocacy campaign?

An advocacy campaign is a set of actions targeted to create support for a policy or proposal. See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#)

, Global Rights, 4, 2005.

The goals of an advocacy campaign may range from drafting and passing a new or amended law against domestic violence to reforming the judicial system to litigating a test case using international human rights standards in domestic courts to implementing and monitoring the implementation of international human rights standards in a local context.

Why is advocacy important?

- Non-governmental organizations (NGOs) and human rights defenders around the world are working to advocate for the protection of women from all forms of gender-based violence. Gender-based violence is a form of discrimination against women and is a fundamental violation of the right to life, liberty and security of person. See: [General Recommendation No. 19 \(1992\)](#); [General Comment No. 16 of the Committee on Economic, Cultural and Social Rights \(2005\)](#). Advocacy to end violence against women is closely linked with the elimination of discrimination, which in turn, is necessary to achieve full equality

between men and women. See: [Convention on the Elimination of all forms of Discrimination Against Women](#), Arts. 1-2, 1981.

- Advocacy designed to change systems is distinct from advocacy on behalf of an individual victim of violence in the courts or within the community. Systems advocacy means efforts to change policy and practice at the local, national or international level; to change the situation for groups of individuals who share similar problems. While systems advocacy works to improve the *system* to the benefit of individuals, it is a long-term approach to problem solving requiring sustained effort. (See: [Advocacy Tools](#), StopVAW, The Advocates for Human Rights)
- Individual advocacy focuses on changing the situation for an individual and protecting her rights. See: [Victim Protection, Support and Assistance](#), StopVAW, The Advocates for Human Rights. Both types of advocacy are critical to ending violence against women and girls. However, the focus of this section of the Legislation on Violence Against Women and Girls Knowledge Asset is on advocacy at the policy and systems level.
- Advocates working at this level must always keep the practical needs of victims in mind when changing policies and systems. At the same time, advocates may be able to accomplish broad policy and systems change in conjunction with practical activities. An effective strategy to address violence against women and girls should incorporate both practical and policy and systems change activities, and many NGO activities function on both of these levels simultaneously. (See: [Advocacy Tools](#), StopVAW, The Advocates for Human Rights; Women's Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 121, 1997)
- Advocacy for systems change should aim to improve respect for and the protection of women's human rights. Within the broad human rights framework, advocacy initiatives vary and should be reflective of specific country conditions. Advocacy initiatives under the human rights perspective, however, tend to focus on improving the human rights system at all levels, meaning from local government institutions up to intergovernmental organizations, such as the United Nations. See: [Advocacy Tools](#), StopVAW, The Advocates for Human Rights.
- Those who advocate for the human rights of women and girls or “women human rights defenders” may be at risk of the very human rights violations they are attempting to remedy. Women human rights defenders may experience gender-based discrimination, prejudice, public repudiation, threats of and actual violence against them. In holding governments accountable, women human rights defenders may even face arrest, detention or death. As of January 2007, the UN Special Rapporteur on the situation of human rights defenders had received 449 cases of violations against women human rights defenders. (See: Claiming Rights, Claiming Justice: [A Guidebook on Women Human Rights Defenders](#), Asia Pacific Forum on Women, Law and Development, 15-17, 2007)

How is advocacy defined?

- Advocacy may be defined in a variety of ways, but at its core, advocacy is “the exercise of power by the citizenry in the face of the government’s power.” Advocacy is a tool for real participation by citizens in decision-making by government and other powerful bodies. See: [Manual for Facilitators of Advocacy Training Sessions](#), Washington Office on Latin America, 12, 2001.
- At the same time, advocacy must go beyond engaging the citizenry to engaging both citizens and non-citizens, particularly in the context of the instability in the world which internally displaces and causes citizens to flee their homes and countries in search of safety and security. Women and girls who have experienced gender-based violence may find themselves in foreign countries as a result of war, having been trafficked for labor and/or sexual exploitation; or fleeing abusive spouses and partners or harmful practices which compromise their safety and lives. See: [International Human Rights Training Program Resource Manual](#), Equitas: International Centre for Human Rights Education, 317, 2009.
- Advocacy may further be defined as:
 - The act of giving support to a policy and persuading those with power to act in support of the policy at local, national and international levels. See: *Women’s Human Rights Step by Step*, Women, Law & Development International and Human Rights Watch, 116, 1997; [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 4, 2005.
 - Gaining and exercising power to influence a political action. See: [Advocacy & Lobbying, International Knowledge Network of Women in Politics](#), paragraph 2.
 - A set of organized actions aimed at influencing public policies, social attitudes and socio-political process that enable and empower the marginalized to speak for themselves. See: [International Human Rights Training Program Resource Manual](#), Equitas: International Centre for Human Rights Education, 317, 2009.
 - Organized efforts by citizens to influence the formulation and implementation of public policies and programs by persuading and pressuring state authorities, international financial institutions, and other powerful actors. See: [Manual for Facilitators of Advocacy Training Sessions](#), Washington Office on Latin America, 12, 2001.
- Advocacy consists of both strategy and action to achieve an objective. The objective of advocacy is the engagement of stakeholders in the decisions affecting them. The actions to achieve the objective typically occur over time, and incrementally. Rarely do non-governmental organizations achieve success the first time they undertake an advocacy strategy. Rather, success must be

achieved step-by-step through a persistent and long-term commitment to the advocacy goal.

CASE STUDY: In Pakistan, landmark legislation protecting women against sexual harassment in the workplace passed nearly a decade after civil society advocacy began their efforts. The [Alliance Against Sexual Harassment](#) (AASHA) in Pakistan, a coalition of six women's groups, began their advocacy process by reviewing laws and policies from around the world related to sexual harassment, with a specific focus on countries they felt were similar to Pakistan for social, political, or geographic reasons. After gathering this background information, AASHA began an in-depth situational analysis of sexual harassment in the workplace. The situational analysis focused on workers in specific fields, including nursing, sales and marketing, domestic workers, and agricultural workers. After reviewing the background information and data, AASHA drafted a proposed Code of Conduct for Gender Justice at the Workplace. After review by legal experts, the draft code was submitted to the Ministry of Women's Development and a series of regional consultations on the draft were held around Pakistan. Other partners were brought to the process, including the Ministry of Labor and the International Labour Organisation. This process culminated in a National Technical Meeting on the Code of Conduct, during which experts and other stakeholders came together to provide input on the draft. A final draft of the code emerged from these meetings.

Advocacy didn't stop there however. AASHA and partners worked with a small number of employers in Pakistan to test the code in their workplaces on a voluntary basis. Then, the group worked with employers across Pakistan to encourage them to adopt the code for their workplace – those employers that became involved were listed on AASHA's website as progressive supporters. The code was incorporated into a draft law that was ultimately endorsed by the cabinet in 2008 and passed in 2010. Moreover, through annual meetings with women workers from across Pakistan, it became clear that changes to the penal code were also needed to ensure protections for workers in the informal sector in particular. AASHA proposed such a change, and a revision to the Penal Code and the Code of Criminal Procedure was passed in 2009. See: [Summary of the Process through which The Code of conduct was drafted](#), Alliance Against Sexual Harassment; [Raja Asghar, Pakistan clears landmark bill against sexual harassment, Jan. 22, 2010](#); [Nosheen Abbas, Sexual Harassment in Pakistan, Dec. 16, 2009](#).

Types of advocacy

What is Women's Human Rights Advocacy?

Women's human rights advocacy:

- Amplifies the definition and understanding of human rights to cover abuses of women that are not yet generally acknowledged as human rights violations;
- Expands the scope of state responsibility for the protection of women's human rights in both the public and private spheres; and

- Enhances the effectiveness of the human rights system at both national and international levels in enforcing human rights and holding abusers accountable.

See: Women's Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 117, 1997.

What is legislative advocacy?

- Legislative advocacy is the specific activity of advocating for the creation and adoptions of rights-specific legislation, or changes to existing legislation. This activity is also frequently known as “lobbying” because it occurs in the lobbies of congress or parliament. Lobbying necessarily involves having a strong draft bill or law that incorporates the best practices to present to the legislative branch of your government.
- One of the first steps in passing a new law or changing an existing law is the [drafting process](#). Attorneys, advocates, government and non-government officials, constituents and those directly affected by any proposed law should be consulted and involved in the process. Many countries consult international and regional experts to review their laws prior to presenting them to the legislature. This is a critical and absolutely necessary part of the lobbying process and cannot be overemphasized. The draft law should reflect the experience and best practices in the area addressed. The language of the law must be carefully reviewed to avoid unintended consequences and the potential undermining of women's human rights. Consultation with advocates from other countries or jurisdictions with experience in the implementation of similar laws can facilitate these goals by incorporating best practices and lessons learned. See: [Lobbying and Legal Reform](#), StopVAW, The Advocates for Human Rights.
- In addition to the effort of [drafting a sound new law](#) or amendments to an existing law; lobbying itself requires a great deal of effort, thought, coalition building, and expertise. Lobbying is only one component of a larger advocacy strategy. Advocates should consider how lobbying fits into the overall advocacy strategy and the best time to engage in lobbying. In addition, lobbying should not be undertaken without significant discussion and planning. See: [Lobbying and Legal Reform](#), StopVAW, The Advocates for Human Rights.

CASE STUDY: Advocating for a Sexual Harassment Law in Benin, West Africa

In the West African country of Benin, sexual harassment of women and girls has been a serious concern. With the long term support of international partners and in consultation with non-governmental organizations and civil society, Benin in 2006 passed a broad law aimed at preventing and punishing sexual harassment of women and girls. See: [Loi sur le Harcelement Sexuel](#), 2006; [Benin bans sexual harassment](#), womenenews.org, July 26, 2006.

Efforts to draft a law began with a consideration of how to focus the law – solely sexual harassment in employment or to also address other areas. The coalition held a week-long workshop, facilitated by an expert with knowledge of the topic, and included high-ranking government officials, international partners, NGOs, and representatives from the business and education sectors. Drawing on a model sexual harassment law, the workshop split into smaller groups to carry out the drafting. The next step was to hold a workshop for parliamentarians to educate them about the draft law and to garner a commitment to introduce the legislation. Parliamentarians committed to introduce the bill, and despite a delay because of elections, the bill was introduced and passed. See: USAID Women’s Legal Rights Initiative, [Annual Report on Good Practices, Lessons Learned, and Success Stories](#), 6-7, 2006.

USAID identified the following good practices that were a central component of Benin’s effort to draft and pass sexual harassment legislation:

- Develop a well-drafted sexual harassment law using local experts that improves a country’s legal framework, thus benefiting the population (especially women), which can be replicated in other countries.
- Use a collaborative approach at all stages of the process to draft legislation by holding a workshop for key stakeholders early on to solicit buy-in and input.
- Build on previous work, knowledge, and expertise of a network of NGOs, and continue to work closely with them throughout the process.
- Hold regular informational meetings with key stakeholders to convey the results of the legislative drafting process.

See: USAID Women’s Legal Rights Initiative, [Annual Report on Good Practices, Lessons Learned, and Success Stories](#), 6, 2006.

What is advocacy for legal system reform?

- Legislative advocacy may be accompanied by wider legal systems reform, which not only seeks to create or change legislation, but also to ensure that such legislation is properly implemented. Advocacy for legal system reform is the specific activity of advocating for the creation and adoptions of policies and procedures that implement or give effect to legislation or changes to existing legislation. Legal system reform is not the only type of reform that may directly impact victims of violence. Efforts to reform systems that provide housing, health, labor, education, and child care also assist victims of violence.

- Such advocacy may include improving the response of law enforcement, prosecutors, and judges. The following examples all demonstrate the power of advocates identifying gaps in the way laws have been implemented, and seeking to improve the response by working collaboratively with members of the legal system to create new processes, procedures and programs.

(1) Law Enforcement reform efforts

An example of broad legal systems reform related to improving the police response to domestic violence is the implementation of policies or laws that change the way in which, or the conditions under which, officers may, should and must make arrests. For example, in cases involving simple or minor injuries, "probable cause" arrest policies allow police officers to make arrests based on the presence of evidence (such as damaged property, visible injuries, or a frightened woman) that would lead to the conclusion that an assault had occurred. Police may make the arrest without witnessing the crime. Mandatory arrest policies take this one step further and require the police to make an arrest at the scene of a domestic assault. See: [Law Enforcement Reform Efforts](#), StopVAW, The Advocates for Human Rights.

(2) Prosecutorial reform efforts

Another example of legal system reform has been in countries that have created dedicated domestic violence units within prosecutor's offices—that is, teams of prosecutors who prosecute only domestic violence cases. Many prosecutors' offices have policies that provide for prosecution of cases without the victim's testimony, if there is sufficient independent evidence. These policies are sometimes referred to as "evidence based" or "absent victim" prosecutions. Such a policy sends the message to the offender and the community that the state sees domestic violence cases as a community priority. See: [Prosecutorial Reform Efforts](#), StopVAW, The Advocates for Human Rights, 2006.

Prosecutors' offices have also sought to improve their response by developing ways to provide victims and witnesses with additional information and support. Some offices coordinate with battered women's groups to provide these services, while others have created a victim/witness advocate position within their offices to assist victims throughout the criminal proceeding. See: [Prosecutorial Reform Efforts](#), StopVAW, The Advocates for Human Rights, 2006.

(3) Judicial reform efforts

Advocates can work to improve judicial responses to domestic violence in a number of ways. However, advocates should be aware of the state of the judiciary in the particular country where reform will be advocated. The American Bar Association (ABA) Rule of Law Initiative measures progress in judicial reform with its Judicial Reform Index (JRI), an assessment tool comprised of 30 objective factors against which a judicial system can be evaluated. See: [ABA Rule of Law Initiative Home](#), [Judicial Reform Programs](#).

- Advocacy for judicial system reform may take the form of court monitoring, training, dedicated courts and processes. [Court monitoring](#), for example, helps to systematically identify needed improvement in judicial responses. The results of the monitoring can be used to advocate for improvement in the system. Monitoring also increases the visibility of these issues; the presence of monitors in courtrooms can itself cause judges to improve their handling of domestic violence cases. Trainings for judges can provide judges with the information they need to better address the needs of battered women and ensure batterer accountability. See: [Role of the Judiciary](#), StopVAW, The Advocates for Human Rights, 2006. [Court monitoring](#) has been effective in many countries, including Macedonia and Brazil.

CASE STUDY: In Minnesota, USA, a non-profit organization called [WATCH](#), engages in court monitoring of cases related to violence against women. WATCH has identified and been a part of numerous legal system changes over the years. WATCH trains volunteers to attend court sessions and report on what they observe. Volunteers are in court everyday, allowing WATCH to gather comprehensive, reliable data. WATCH also gathers comprehensive data on cases. This data in combination with the courtroom observations enables WATCH to identify trends and systemic problems. Finally WATCH staff and volunteers advocate for system changes as indicated by the trends and systemic problems. They provide information and recommendations to legislative and policy making bodies, court staff, and the public so as to encourage change that protects the rights of women in the legal system. WATCH also conducts training and provides resources for those who wish to start a court monitoring program. For example, WATCH has monitored the implementation of Minnesota's new felony strangulation law as well as examining how victim impact statements affect sentencing.

- [Dedicated courts and court processes](#) can also help ensure batterer accountability and victim protection by streamlining navigation of the court system, increasing victims' access to resources, and ensuring a greater expertise of the judges and other personnel addressing these issues. See the 2008 United Nations expert group report entitled "[Good practices in legislation on violence against women](#)" for recommendations on creating legislation on violence against women, including specialized courts (Section 2.H), investigation and legal proceedings (Section 7), and sentencing (Section 9). See: [Role of the Judiciary](#), StopVAW, The Advocates for Human Rights, 2006. A number of countries have begun to use dedicated courts, including Spain and Liberia, featured in the following case study. See: [Promising Practice: Spain's Specialized Violence Against Women Courts](#), 15, Domestic Violence Section.

CASE STUDY: Liberia's Court "E" for Sexual Violence

As the West African nation of Liberia began its recovery after two decades of internal conflict and civil war, the plight of women victims of sexual violence was desperate. After a civil war in rape and sexual violence were used as a war tactic with complete impunity, Liberia saw the same pattern of impunity repeating in the post-conflict era. The Advocates for Human Rights, [Liberia is Not Ready: 2010](#), 35. After passing a new law against rape in 2005 but seeing rape cases move too slowly through the regular courts, women's rights groups such as the Association of Female Lawyers of Liberia, determined that a special court was necessary to focus exclusively on sexual violence against women. After two years of advocacy, the establishment of Court E was approved. With the support of the UNFPA a new building was constructed, training for prosecutors and police was begun, and cases have begun moving through the court. When the court opened, more than 140 people were awaiting trial on rape charges. The court has exclusive original jurisdiction over cases of rape, sodomy and other forms of sexual assault including abuse of minors. [Special Court for Sexual Violence Underway](#), IRIN, March 21, 2008; [Liberia – The New War is Rape](#), AllAfrica.com, Nov. 19, 2009.

(4) Inter-agency reform efforts

Prosecutors, judges, advocates, medical personnel, law enforcement, emergency medical technicians, family and community members can also work together to improve the government response to violence against women by creating domestic fatality review boards. These review boards examine domestic violence related deaths including the events leading up to the death(s) in order to determine what lead to the homicide(s); but also to study the particular case at hand and similar cases to identify systemic issues that contributed to the offender's actions and the failure to protect the victim. See: [Domestic Fatality Review Boards](#), StopVAW, The Advocates for Human Rights, 2006. The [St. Paul Blueprint for Safety](#) is an example of an inter-agency reform effort that focuses on criminal justice agencies. The Blueprint includes specific guidance for every agency, including what victims need to be safe, what workers need from each other to do their jobs, and what is required by each worker and agency to hold an offender accountable. See Case Study: [St. Paul Blueprint for Safety](#), 25, Implementation Section of this Knowledge Asset.

What is international human rights advocacy?

- Non-governmental organizations may engage in international human rights advocacy at the United Nations (UN) as well as through regional systems including the [European human rights system](#), the [Inter-American human rights system](#), and the [African human rights system](#). Each regional system has slightly different bodies and mechanisms that may be used to advance and which monitor the human rights of women and girls.

CASE STUDY: Global Rights, a non-governmental organization based in Washington, DC, United States, published “Combating Human Trafficking in the Americas: A Guide to International Advocacy” in 2007. The guide explores the ways in which non-governmental organizations and civil society may utilize regional and international institutions to promote a human rights-based response to human trafficking. The guide describes how non-governmental organizations may participate and bring attention to violations of human rights before the [Organization of American States](#), the Summits of the Americas, the Regional Conference on Migration, the United Nations, and the International Labor Organization. See: [Combating Human Trafficking in the Americas: A Guide to International Advocacy](#), Global Rights, 2007.

- International human rights advocacy and monitoring at the United Nations may be accomplished through [UN bodies](#), [charter-based mechanisms and treaty-based mechanisms](#), and specialized agencies, including [special rapporteurs](#). In order to enforce the provisions of international treaties, the UN does not rely solely on information about violations of human rights brought by individuals or NGOs. The UN human rights bodies themselves regularly monitor compliance with treaty obligations. There are two ways that the reporting and monitoring procedure can be initiated:

(1) Required State Reporting

Once a national government has ratified one of these treaties, it is required to report on a regular basis to the treaty-monitoring body. States are under an obligation to report on their own compliance with the treaty. Treaty bodies issue concluding comments based upon the receipt of state reports and information received from NGOs. Concluding comments are available on the [country pages of the United Nations High Commissioner for Human Rights website](#). The following are the [human rights treaty bodies](#) that monitor implementation of the [core international human rights treaties](#) :

- [Human Rights Committee](#) (CCPR)
- [Committee on Economic, Social and Cultural Rights](#) (CESCR)
- [Committee on the Elimination of Racial Discrimination](#) (CERD)
- [Committee on the Elimination of Discrimination Against Women](#) (CEDAW)
- [Committee Against Torture](#) (CAT) & [Optional Protocol to the Convention against Torture \(OPCAT\) - Subcommittee on Prevention of Torture](#)
- [Committee on the Rights of the Child](#) (CRC)
- [Committee on Migrant Workers](#) (CMW)
- [Committee on the Rights of Persons with Disabilities](#) (CRPD)

NGOs have successfully used the State reporting period as a tool for advocacy. Most commonly, NGOs may submit alternative or "shadow" reports, which offer an alternate view of State compliance with treaty obligations. Typically, shadow reports elaborate on information contained in State party reports and provide an alternative analysis. Accredited NGOs can also monitor many of the Committee's proceeding as observers. See: [Reporting and Monitoring Mechanisms](#), StopVAW, The Advocates for Human Rights, 2007.

Promising practice: The [International Women's Rights Action Watch](#) has developed an online knowledge resource on CEDAW, including an [inventory of shadow reports](#) submitted since 2004.

CASE STUDY: In Nepal, the [Forum for Women Law and Development \(FWLD\)](#), coordinates shadow reporting to the Committee on the Elimination of Discrimination Against Women. For Nepali women, shadow reporting has been an important advocacy tool. In preparation for shadow reporting, FWLD advertised in national dailies to call on interested groups to join in the consultation around the reporting process, resulting in a shadow reporting coalition with representation from 45 groups in Nepal. This coalition identified key issues to address in the report, and determined to bring issues from the entire “life-cycle” of girls, women, and elders to the attention of the Committee. A writing committee was formed and received training on key principles of CEDAW. In partnership with other women’s groups, FWLD held regional consultations to gather information on conditions for women across Nepal. Representatives from Nepali NGOs traveled to the Committee’s review sessions to participate. After the Committee issued its report, women’s rights groups used the concluding observations of the Committee in an advocacy campaign that ultimately led to the repeal of many discriminatory legal provisions including those in criminal laws, inheritance laws, adoption, and divorce. Nepali women’s groups have also used CEDAW concluding observations to address discriminatory citizenship laws, and a new draft of the constitution eliminated those discriminatory provisions. See: [Using Shadow Reporting for Advocacy, New Tactics](#); [CEDAW Shadow Report Preparation](#), FWLD.

(2) Committee or NGO-initiated reporting

Some UN monitoring bodies initiate a report on government action outside of the reporting schedule required by a treaty. In the case of the UN Special Rapporteurs, such as the [Special Rapporteur on violence against women](#) and [Special Rapporteur on trafficking in persons](#), the office initiates analyses of specific issues or developments, which is published in a report. Alternatively, information from advocates and NGOs may bring a specific issue to the attention of a UN body, such as the Commission on the Status of Women, which will then carry out a study and issue recommendations. See: [Reporting and Monitoring Mechanisms](#), StopVAW, The Advocates for Human Rights, 2007.

(3) Using the Universal Human Rights Index for Advocacy

The [Universal Human Rights Index](#) (Index), designed for and maintained by the UN Office of the High Commissioner for Human Rights, is designed primarily to facilitate access to human rights documents issued by the UN human rights treaty bodies and the special procedures of the Human Rights Council. The Index provides any interested party, including civil society groups and NGOs, with a new tool for

searching the observations and recommendations of these expert bodies. The Index allows advocates to quickly locate relevant information through searching by country, by region, by treaty body, by right, and by affected group. A search for Angola and CEDAW for example allows advocates to instantly review all the Committee's observations related to Angola's reports as well as the Committee recommendations, which can serve as a blueprint for advocacy.

(4) CEDAW Optional Protocol Complaints and Inquiry Procedures

The [CEDAW Optional Protocol](#) came into force in 2000 and there are currently [99 ratifications](#). This Optional protocol provides an enforcement mechanism for the CEDAW treaty, which had been lacking up to that point. There are two main procedures under the Optional Protocol – an individual complaint mechanism and an inquiry mechanism. Individual women who have a complaint of discrimination against a state party to the Optional Protocol can submit their communication to the Committee in accordance with the [rules](#) under the protocol. The Committee will contact the state for a response and will ultimately make a decision regarding the complaint. In order to submit an individual complaint:

- The entire claim must be submitted in writing; there is no oral hearing.
- The state in which the alleged abuse of rights took place must have been a party to the original Convention and the Optional Protocol at the time the abuse occurred (or the violation must continue beyond the date when the state became a party).
- The submission cannot be anonymous. Each submission must have an identifiable woman or group of women as victim(s) of the abuse. This requirement has been controversial as many groups have argued that it makes it more difficult for the most vulnerable women to bring complaints forward, however the requirement has remained.
- All domestic channels must have been exhausted before women can bring a case to the international level.

The Committee can also request that states to take interim measures at any time during the complaint process. The Inquiry procedure allows the committee to investigate grave and systematic violations of women's rights in a particular state if they receive a report on such a situation from either an individual or a group. This confidential process includes the appointment of a small group of committee members to investigate the claim and submit a report to the state in question. See: [How Can Women Use the Optional Protocol of CEDAW?](#), DAWN Ontario.

CASE STUDIES: CEDAW Decisions

The Committee has issued [ten decisions](#) regarding complaints filed against parties under the Optional Protocol. In five instances, the complaint was found “inadmissible” due to lack of supporting evidence, failure to exhaust normal judicial remedies, or other reasons that the Committee could not reach a decision on the merits.

In four instances, the Committee has found a violation of the Convention. In [A.T. v. Hungary](#), issued January 2005, the author of the complaint (“author”) alleged that she and her children suffered severe violence and abuse at the hands of her common law husband but had not received any protection from the Hungarian government. The allegations included violent physical abuse, threats of sexual abuse, and refusal to pay child support. The allegations of physical abuse were supported by medical certificates. Not only were no restraining orders or protection orders available for the author under Hungarian law, but the husband successfully obtained an order from Hungarian civil courts allowing him access to the family’s apartment based on the conclusion that no abuse could be substantiated and the husband’s property rights could not be restricted. (The apartment was jointly owned.) The author sought help from the civil and criminal courts and child protection authorities, but did not receive any assistance or protection. Following some discussions with the Committee, in 2003 the Hungarian government adopted a resolution regarding prevention and treatment of domestic violence, including plans to introduce legislation providing for restraining orders, provide free legal aid in some circumstances, collect data on domestic violence, and implement a number of additional initiatives. However, in 2004 the author alleged that none of these proposals had been effectively implemented. The Committee found that Hungary had violated the rights of the author under the Convention, and made recommendations to Hungary that it act to protect the safety of the author and act more generally to effect the rights granted under the Convention.

In [A.S. v. Hungary](#), issued August 2006, the author alleged she had been subjected to coerced sterilization. She was given a form to sign during an emergency caesarean section, which turned out to include a section (which was barely legible and used terms she did not understand) granting consent to a sterilization procedure. After the caesarean section was complete she asked when she would be able to have another child, and only then understood that she had been sterilized. She filed a civil legal complaint, but was unsuccessful, primarily because the court found that she had not proven that it was completely impossible that she would be unable to reverse the surgery or otherwise become pregnant. The Committee found that Hungary had violated numerous provisions of the Convention, and recommended that Hungary compensate the author and take steps to prevent similar events from occurring in the future, including reviewing domestic legislation and monitoring practices in hospitals.

[Sahide Goekce \(deceased\) v. Austria](#), and [Fatma Yildirim \(deceased\) v. Austria](#), both issued August 2007, were related cases that were brought by domestic violence organizations on behalf of women who had been killed by their husbands. In both cases, although the police had repeatedly intervened in response to allegations of abuse and threats, and the victims had been granted numerous restraining orders, all attempts to have the perpetrators detained or prosecuted had been denied by local government officials. The authors argued that Austria failed to take sufficient measures to protect the life and safety of the victims, failed to appropriately prosecute those who violate the right to be free of gender-based violence, and generally failed to protect the safety of women. The Committee found that although Austria had an acceptable system in place to deal with violence and abuse, it failed to ensure that the individuals involved in the system acted in such a way that it would actually serve to protect individual victims. As a result, Austria was in violation of numerous provisions of the Convention. The Committee recommended that Austria improve its implementation and monitoring of its legislation regarding domestic violence, strengthen training programs, and take related steps to improve implementation of relevant law, including improving prosecution of domestic violence perpetrators.

See: [CEDAW Decisions](#), StopVAW, The Advocates for Human Rights, 2008.

How does litigation relate to advocacy?

- Litigation in international, regional, and national courts is an important advocacy strategy available to women's advocates around the world. See: [Litigation as an Advocacy Strategy](#), StopVAW, The Advocates for Human Rights, 2003.
- Litigation and legal advocacy may be used to clarify and fill the gaps in domestic legislation and may be used to promote and protect the human rights of women and girls. When used appropriately, human rights litigation can broadly impact the law by challenging existing legal interpretations, which do not conform to international human rights standards nor enforce the rule of law. See: [Promoting Women's Human Rights: A Resource Guide for Litigating International Law in Domestic Courts](#), Global Rights, 2006. Litigation and legal advocacy can also expose gaps in the justice systems' implementation of laws.
- Both lawyers and judges may use international human rights standards in their work. Lawyers may litigate impact or test cases, initiate class action lawsuits or mass filings where class actions are not allowed, or offer legal services to underserved or marginalized populations. In assessing whether international human rights law may be used in litigation, lawyers should consult the international law flowchart developed by Global Rights, which helps lawyers frame legal arguments in terms of international human rights. See: [Promoting Women's Human Rights: A Resource Guide for Litigating International Law in Domestic Courts](#), Global Rights, 39, 2006.

Promising Practice: The United Nations Division on the Advancement of Women (DAW) has organized judicial conferences on the promotion of women's rights in domestic courts. The [judicial conferences](#) were first held in 1999 (Vienna, Austria) and then again in 2002 (Bangkok, Thailand), 2003 (Arusha, Tanzania), 2004 (Nassau, The Bahamas), and 2005 (Santiago, Chile). The conferences provided an important opportunity for judges and magistrates to discuss international human rights standards addressing violence against women and how such standards could be applied in their respective countries.

In 2005, judges and magistrates from Bolivia, Brazil, Colombia, Cuba, Mexico, Paraguay, Peru and Uruguay met in Santiago, Chile to discuss violence against women, among other women's human rights issues. The judges identified several critical factors which stand in the way of the effective implementation of international human rights standards including: the persistent patriarchal system, traditional notions of the nuclear family, perceptions that women's roles are fundamentally to procreate, the tendency to control women's sexuality, and unfamiliarity with women's human rights among other factors. The group also proposed strategies for promoting and protecting women's human rights, including promoting the immediate implementation of the Convention on the Elimination of Discrimination Against Women (CEDAW) and the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#) (Belem do Para) and the adoption of specific laws to prevent and eliminate violence against women. See: [Final Report of the Judicial Conference about the Application of International Human Rights at the Domestic Level](#), DAW, 2005 (Spanish).

In 2003, judges and magistrates from eleven African countries at the conference considered and examined judicial developments and trends in the areas of the human rights of women and girls as relates to nationality, family law, and violence against women, and the extent to which domestic jurisdictions have incorporated international human rights law in their decisions in those named areas. The 2003 conference resulted in important acknowledgements and a declaration of commitments, including the judges' intent to use CEDAW in relevant decisions interpreting domestic law. See: [Arusha Declaration of Commitments on the Role of the Domestic Judge on the Application of International Human Rights Law at the Domestic Level](#), United Nations, DAW, 2003; [Promoting Women's Human Rights: A Resource Guide for Litigating International Law in Domestic Courts](#), Global Rights, 25-26, 2006.

The [International Association of Women Judges](#) (IAWJ) has also been honored by UNIFEM for its work in training judges under its Jurisprudence of Equality Program. The program provides training for members of the judiciary, female and male, on the domestic application of international, regional and national law on issues dealing with discrimination and violence against women. Judges are trained by other judges, leading to enhanced credibility of the information. The program has trained judges and magistrates in 21 countries and led to important decisions, particularly in East Africa. In Kenya, Tanzania, and Uganda rulings from judges trained in the program have cited to the UDHR, Article 3 of the Convention on the Rights of the Child, the Declaration on the Elimination of Violence Against Women, and Articles 2,15,16 of CEDAW and addressing issues of equal protection of the law, property rights, rape, domestic violence, and divorce. See: [Jurisprudence of Equality Program](#), IAWJ; [Jurisprudence of Equality Program Decisions](#), IAWJ. See [Implementation Section](#) of this Module.

CASE STUDIES:

A legal team of lawyers from the [Columbia Law School Human Rights Clinic](#) and the [American Civil Liberties Union](#) represented Jessica Lenahan (formerly Gonzales), a domestic violence survivor in the United States, claiming that her human rights were violated in 1999 by local police who ignored her calls for help when her husband violated a restraining order. He kidnapped and murdered their three children. Her suit against the Castle Rock, Colorado, Police Department, ultimately failed in 2005, when the United States Supreme Court held she had no constitutional right to have the Police Department enforce her restraining order. Lenahan then filed suit against the United States at [Inter-American Commission on Human Rights](#) (IACHR) arguing that the [American Declaration on the Rights and Duties of Man](#) required the United States to protect domestic violence victims from private acts of violence. As of November 2009, a decision in the case was pending. See: [Update on Jessica Gonzales v. U.S. Merits Hearing](#), StopVAW, The Advocates for Human Rights, 2008 and the ACLU [website](#) for more information.

Impact litigation, meaning litigation of cases that have the potential to broadly impact conditions for many similarly situated people or to highlight a particular issue, is an important form of advocacy to protect women's rights. Many civil society organizations partner with international NGOs to litigate high impact, high visibility cases.

For example, in the case of *Opuz v. Turkey*, the European Court of Human Rights ordered the government of Turkey to pay damages to a woman who had suffered devastating domestic violence from her husband and who the state had failed to protect in any meaningful way. See [CASE STUDY: Obtaining redress for domestic violence through human rights bodies](#).

The case marked the first time that the European Court recognized states' failure to protect women from domestic violence as a form of gender discrimination. The European Court had previously recognized a state's obligation to provide domestic violence victims with redress in the case of [Bevacqua and S. v. Bulgaria](#). See [CASE STUDY: Obtaining redress for domestic violence through human rights bodies](#)

In the *Opuz* case, women's groups from Turkey were engaged and the international NGO INTERIGHTS was a third party intervener before the court. After the ruling, women's groups in Turkey used the case as a rallying cry for further advocacy, demanding education on issues of gender equality and domestic violence, demanding funding for shelters and police training, and demanding that government ministries take effective action to broadly address gender equity in Turkey. See: [Women's groups urge mobilization on gender equality](#), Today's Zaman; [Opuz v. Turkey – European court Clarifies State Obligations to Protect Women from Domestic Violence](#), INTERIGHTS.

In Egypt, non-governmental organizations closely monitored and challenged a series of decrees issued by the Minister of Health, first in 1994 permitting the practice of female genital mutilation in hospitals, and again in 1996 when a decree banning the practice was challenged by opponents in the courts. The decree was challenged, but upheld by the highest administrative court. See: [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), Anika Rahman and Nahid Toubia, p. 82, 2000. See [Health Regulatory Measures](#).

Identifying the problem: investigating and gathering evidence

The investigation and documentation of human rights violations creates the platform for most, if not all, actions to advocate for changes in law, policy and practice. Fact-finding must be conducted using ethical research techniques and preserving the confidentiality of victims of human rights abuses. Evidence gathering should be aimed at uncovering the information needed to objectively evaluate a government's compliance with international obligations to protect women and girls from violence and identifying the problem to be addressed with advocacy. At times, it may also be necessary to preserve the anonymity of government sources of information in order to protect those with intimate knowledge of the government's compliance. Regardless of the sources of evidence, researchers must be fair, accurate, reliable and impartial or run the risk of undermining the entire effort.

Research the nature and extent of the problem

- The value of a human rights-based approach to investigation and documentation of violence against women and girls helps to uncover barriers and breakdowns in the overall criminal justice system (for example, in cases of domestic violence, the victim must pay for a forensic examination, or the police delay sending files to the prosecutor). In many countries the problem is not in the law itself, but in the implementation of the law, meaning that existing procedures and regulations create obstacles to women who try to access the system. Often information about the nature and extent of the problem has already been documented through the United Nations reporting system. Advocates should review the concluding observations of the [Committee on the Elimination of all Forms of Discrimination Against Women](#), the [Committee Against Torture](#), and the Committee on the Rights of the Child for their country. Human rights reports from other sources can also be used as guides to identify exactly which sections of the system need to be improved or corrected. (See: [Using Human Rights Reports](#), StopVAW, The Advocates for Human Rights, 2003)
- Non-governmental organizations may choose to conduct human rights fact-finding missions on their own, with partner organizations or use the human rights reports of other trusted organizations. NGOs can use the information in human rights reports to support arguments for specific changes to the system, both at the policy level and, if necessary, changes to the laws themselves. See: [Using Human Rights Reports](#), StopVAW, The Advocates for Human Rights, 2003.
- Several NGOs have developed methodologies and guides for investigation and documentation of human rights violations against women and girls.
 - Women, Law & Development International and [Human Rights Watch](#) include a step-by-step guide for investigating and documenting violations of women's human rights. See: *Women's Human Rights Step by Step*, Women, Law & Development International and Human Rights Watch, Chapter 6, 1997.
 - The Office of the High Commissioner for Human Rights published a human rights monitoring manual, which contains basic principles for monitoring,

suggestions for prioritizing human rights violations, and interviewing techniques. See: [Training Manual on Human Rights Monitoring](#), Office of the High Commissioner for Human Rights, 2001 available through the University of Minnesota Human Rights Library.

- The Advocates for Human Rights, a U.S.-based NGO, has created methodologies for research on domestic violence and employment discrimination and sexual harassment in the workplace which may provide useful guides for other advocates who are developing their own methodologies. See: [Sample Methodologies and Guidelines, StopVAW](#), The Advocates for Human Rights, 2003.
- The World Health Organization and the Program for Appropriate Technology in Health (PATH) published a guide entitled [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#) written by Mary Carroll Ellsberg and Lori Heise. The guide describes qualitative research methods on gender-based violence and ways to use the findings of such research to influence policy and decision-makers. See: Ellsberg M, and Heise L, [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), Washington DC, United States: World Health Organization, PATH; 2005.

Key steps in investigating and documenting violations of women's and girl's human rights

The key steps identified by Women, Law & Development International and [Human Rights Watch](#) for investigating and documenting violations of women's human rights include the following:

Preparation Steps

1. Set investigation objectives
2. Identify the violation
3. Identify key actors
4. Create an information checklist
5. Identify likely sources of information
6. Agree on a research methodology
7. Make logistical and other arrangements
 - a. Identify and obtain necessary resources
 - b. Select fact finders
 - c. Select interpreters
 - d. Establish security measures

Fieldwork/Investigations

1. Decide on the type of evidence to be gathered
2. Establish parameters for interviews
3. Conduct the interviews
 - a. Make careful notes
 - b. Devise an indexing system to compare comments on the same incidents
 - c. Keep a reminder list to collect additional information
 - d. Ask for documents to substantiate information gleaned
 - e. Use interview protocols
 - f. Compartmentalize: Never tell one witness what another has said
 - g. Use judgment to withhold information that may jeopardize the safety or well-being of those giving testimony
 - h. End the interview by thanking the interviewee and asking an open-ended question such as “is there anything else I should know?”
4. Gather secondary data

Follow-up and Analysis

1. Show that there is a protected right
2. Show that a women’s human rights violation occurred
3. Clearly demonstrate state responsibility
4. Identify and evaluate potential solutions
5. Report the findings -- The report should:
 - a. Detail the evidence collected
 - b. Vary the sources of evidence
 - c. Make a clear human rights argument
 - d. Include conclusions and recommendations
 - e. Include the government’s response if they have received and commented on an advance copy of the report
 - f. Send the final report to those interviewed

Ongoing Monitoring and Follow Up

- Advocates should commit to significant monitoring and follow-up after the investigation and documentation of human rights violations against women and girls is completed. This is critical to any advocacy work following the release of a human rights report. Advocates must monitor the implementation of the recommendations of the report to ensure that legislators, prosecutors, judges, police, service providers, and the media do not simply ignore the report. Advocates should plan for this effort and ensure that appropriate resources are dedicated to it. The findings from this process will inform the advocacy efforts.

- Monitoring and follow-up may include any of the following activities:
 - Creating legislative proposals for new or amended laws addressing the documented human rights violations against women and girls;
 - Training prosecutors, judges, police, service providers and the community about the documented violations and the most appropriate response;
 - Coordinating monitoring teams to ensure the recommendations are taken seriously;
 - Observing legal proceedings that address the documented violations; and
 - Communicating with officials about their role in addressing the documented violations.

See: Women’s Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 153-154, 1997.

- Additional information about monitoring laws may be found in the “Monitoring of Laws on Violence Against Women and Girls” section of this knowledge asset, including a case study on monitoring the implementation of the Bulgarian law on domestic violence.

(See How to Monitor the Implementation of Laws in the Monitoring Section of this Module)

CASE STUDY: In the Republic of Georgia, advocates actively participated in the drafting and monitoring of the Law of Georgia on the “Elimination of Domestic Violence, Protection of and Support to its Victims” (2006). The law initially allowed police to issue restrictive orders against violent offenders in the family and courts to issue protective orders to protect victim safety. As advocates monitored the implementation of the law, it became clear that additional amendments to the law were needed to better protect victims and hold perpetrators accountable were needed. These included:

- Providing an emergency order for protection
- Allowing removal of the violent offender from the home
- Authorizing the removal of guns from the home
- Criminalizing the violation of an order for protection

Advocates worked together to draft amendments to the Law of Georgia on the “Elimination of Domestic Violence, Protection of and Support to its Victims” to accommodate these changes. The amendments were not initially adopted by the Parliament. But, after additional input by a group of experts and a change in the political situation, the amendments were adopted in December 2009.

See: Response from the [Anti-Violence Network of Georgia](#), March 2010.

Research best practices addressing the problem

- In addition to documenting the nature and extent of the problem, human rights researchers should examine best practices in addressing violence against women and girls. Such best practices serve as models for new law, policy and practice that may be adapted in a particular context. For example, the UN Division on the Advancement of Women and the UN Office on Drugs and Crime published “[Good Practices in Legislation on Violence Against Women](#)” in 2008. This report contains a framework for legislation and highlights good practices.
- This knowledge asset also contains promising practices in addressing all forms of violence against women and girls. These promising practices should be reviewed by those advocating for new laws on violence against women and girls.

Gather testimonials by those whose human rights are affected

- Women and girls who have been denied their right to live free from violence violated can provide compelling stories for legislators, parliamentarians and other government officials. While decision-makers may at times argue with advocates on the facts, they are not as likely to argue with personal stories. Therefore, it is critical to provide such testimony; but only when the victim is comfortable in presenting her story. Those willing and able to testify should address the following questions:
 - What is the individual testifier’s interest in the proposed legislation?
 - Why is the individual willing to tell his/her story?
 - What does the individual want the policymakers to do?
- These stories can be used with law and policy makers and also as a part of monitoring reports.

CASE STUDY: In Senegal, a grassroots movement of women supported each other in telling their stories and providing testimony before the Parliament when it was considering a law prohibiting female genital mutilation. The coalition of non-governmental organizations successfully convinced the legislators to take action to stop FGM. See: [Female Genital Mutilation: A Guide to Laws and Policies Worldwide](#), Anika Rahman and Nahid Toubia, p. 80, 2000.

Review research and determine what change is needed

After investigating and gathering evidence, advocates must carefully review and analyze all of the research results. If the authors of the research or human rights report have made recommendations, those recommendations will likely point out the change needed. In the absence of such recommendations, advocates should answer the following questions:

- Where is change needed?
 - What are the important issues facing the constituency?
 - What do the constituents think is the most important issue?
- What is the change needed?
 - Define the goals – make them realistic, achievable, and worthwhile
 - Define the objectives
 - Consider the political climate and probability of success
 - How has the problem been addressed in the past, if at all?
- Why is the change needed?
 - Create a simple message that all members of the legislative effort can agree on
 - Create a truthful, non-technical message
- How will change happen?
 - Who can make the objective happen?
 - How can those individuals be influenced?
 - Who will support you in the effort?
 - Who will oppose you in the effort?

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 9-12, 2005.

CASE STUDY: [ECPAT International](#) (End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes), an organization dedicated to ending sexual exploitation of children, has created a guide for advocates on strengthening laws addressing child exploitation. The guide focuses on the fact that legal reform must begin with a comprehensive review of the current status of national laws and international legal obligations. ECPAT International's guide also contains a checklist for legal reform, which can also be read as a checklist of advocacy objectives. The checklist first identifies the international treaties which all states should ratify in relation to child sexual exploitation. The checklist goes on to identify the types of issue-specific definitions that should be included in national laws. The checklist describes the provisions that should be included in national laws relative to sexual abuse and exploitation, child prostitution, child pornography, child sex tourism, and extradition/mutual legal assistance so that national reviews can identify gaps and language that needs to be altered. Finally, the checklist clarifies the importance of data collection as well as establishing, through law, a national infrastructure to punish and track offenders and to support victims. See: [Strengthening Laws Addressing Child Sexual Exploitation: A Practical Guide](#), ECPAT International.

The advocacy process

Overview

The advocacy process involves a number of interrelated actions designed to strategically affect change at various levels - including increasing community awareness of the issue to create a constituency to push for legal reform, influencing law and policy making and improving the overall response to violence against women and girls. Drafters and advocates for new or improved laws should identify the purpose of the advocacy campaign before initiating action. The purpose may range from solving a specific problem by changing a law or policy to generally raising awareness about violence against women and girls in a specific country or region of the world.

CASE STUDIES:

Tanzania's Advocacy Expert Series: From January 2002 to September 2005, Pact Tanzania implemented the Tanzania Advocacy Partnership Program. The program was a comprehensive capacity strengthening program for Tanzanian civil society organizations with the goal of building the capacity of the CSOs to conduct advocacy programs effectively. The outcome of the project was the creation of an Advocacy Expert Series as well as Legislative Roadmap Guides for Tanzanian civil society groups. The Advocacy Series includes six guides focused on [Building and Maintaining Coalitions and Networks](#), [Civil Society and Advocacy](#), [Community Mobilization](#), [Gender Mentoring](#), [Policy Law and Governance](#), and [Media](#). The guides highlight strategies for advocates in the African context throughout the advocacy cycle, including problem identification, research, planning, building alliances, action and evaluation.

Moldova: In 2001-02, the Council of Europe implemented a pilot program in Moldova on criminal law reform on trafficking in human beings. The stated goal of the program was to contribute to the effective criminalization of trafficking in human beings at the regional level and to ensure protection of victims' human rights. This program engaged Moldavian authorities in extensive analysis and review of legislation as well as development of and feedback on plans for implementation of a national strategy to combat trafficking. International experts as well as NGOs were convened to provide commentary on draft legislation to criminalize trafficking in human beings, with specific focus on harmonization with international legal standards. Council of Europe advisors also encouraged Moldavian authorities to develop secondary legislation on the prevention of trafficking as well as on assistance for victims. Ultimately, Moldova developed a specific action plan to implement the newly drafted legislation that reached far beyond simply passing the new law. Moldavian authorities identified the fact that they would need to promote the new legislation, develop new mechanisms to protect victims and witnesses under the new law, establish shelters and funds for victim compensation, improve legislation on cooperation between the government and civil society, create new specialized structures within the police, judiciary and border control, ratify several additional treaties and protocols, and designate government officials to actively engage with regional anti-trafficking networks. Ultimately, the pilot program in Moldova was followed by a region-wide anti-trafficking program designed to harmonize legislation in ten countries. See: Council of Europe Directorate General of Legal Affairs and Directorate General of Human Rights, [Criminal Law Reform on Trafficking in Human Beings in South-Eastern Europe: Pilot project in Romania and Moldova](#), 2003.

Defining your advocacy goals: what is success?

Those working to implement advocacy initiatives should first define what success is in the particular context in which they are working. For a non-governmental organization working on the sex trafficking of women and girls, success might mean raising awareness among legislators about the need for housing for sex trafficking victims one year; while later in the advocacy process, success might mean passing legislation directing the government to allocate funds to such housing.

CASE STUDY: In 2009, The Advocates for Human Rights worked with the [Minnesota Human Trafficking Task Force](#) to strengthen Minnesota's human trafficking law. The coalition initially set out to improve the state's response in several ways including strengthening the criminal penalties, providing services and assistance to trafficking victims, training those responsible for responding to trafficking cases, and raising public awareness about human trafficking. However, as the coalition engaged with legislators and allies, the group decided to focus on only one aspect of improving the state's response in 2009 and to wait to move forward the remaining aspects until future legislative sessions.

In 2007, The Advocates for Human Rights was selected by the Minnesota Department of Public Safety's Office of Justice Programs to conduct a human sex trafficking needs assessment for the state. The assessment, requested by the [Minnesota Human Trafficking Task Force](#), was undertaken using the human rights documentation and fact-finding techniques The Advocates developed in its international work and was adapted in its local work to analyze the services available to and the barriers faced by trafficked persons when seeking safety and support.

The report [Sex Trafficking Needs Assessment for the State of Minnesota](#), published in September 2008, examines the government response to this issue at the local, state, tribal and federal levels; identifies facilities and services currently available to trafficking victims in Minnesota; assesses their effectiveness; and makes recommendations for coordinating services to better meet the needs of sex trafficking victims statewide. One of the key findings of the report was that "at the state level, sex traffickers and pimps receive sentences that are disproportionately low compared to other felony crimes and which cannot be enhanced based on prior convictions." As a result, The Advocates recommended that the Minnesota Legislature "should amend state law to ensure that sentences for sex trafficking are proportionate to other felony offenses for crimes against persons. The law should also be amended to allow for sentence enhancements."

As a follow-up to these recommendations, The Advocates worked with the statewide [Minnesota Trafficking Task Force](#) to draft bills to strengthen the criminal penalties, provide services and assistance to trafficking victims, ensure trafficking victims access to state public benefits, and create training and public awareness programs, which were introduced as a comprehensive legislative package. Prior to the introduction of the bills, The Advocates discussed the legislative climate, fiscal crisis, priorities, and compromises within the coalition of supporters as well as with the legislators authoring the bills. Given all of the factors, the coalition decided to make passing the enhanced criminal penalties the priority but to seek public hearings on all of the bills. The rationale for this approach was to raise awareness among legislators about the importance of a comprehensive approach to addressing human trafficking with measures to enhance prosecution, promote protection of trafficking victims, and prevent further human trafficking through public awareness. But, the group knew that the budget deficit would also be a factor on the minds of legislators and decided to temporarily set aside the bills related to providing services and assistance to trafficking victims, ensuring trafficking victims access to state public benefits, and creating training and public awareness programs. The group involved and consulted law enforcement, prosecutors, and services providers in the drafting process to ensure that the bills addressed their issues and concerns. The group also sought the assistance of attorneys within the Minnesota Legislature with expertise in drafting laws.

Once the bills were introduced, the coalition attended and testified at eight legislative hearings before various committees of the Minnesota House of Representatives and Minnesota Senate. Talking points and handouts were prepared for legislators and others interested in the proposed legislation, which included the need for the legislation and the proposed solutions. The Advocates coordinated the testimony and confirmed the participation of several key testifiers in advance of the hearings. Together, the testifiers and The Advocates prepared for possible objections to the bills and practiced responding to these objections. The Advocates also prepared sample language for the public to use in asking their elected officials to support the proposed legislation and sent this information to its constituents and members of the coalition for public dissemination. After each hearing, The Advocates updated the coalition and constituents about the results and next steps. The Minnesota Legislature unanimously passed and the governor signed the bill providing enhanced criminal penalties into law on May 21, 2009.

The criminal amendments took effect on August 1, 2009 and will enable law enforcement and prosecutors to better hold the perpetrators of this grave human rights violation accountable. Specifically, the amendments to the law:

- Provide law enforcement and prosecutors with the ability to arrest and charge sex traffickers with higher penalties where an offender repeatedly trafficks individuals into prostitution, where bodily harm is inflicted, where an individual is held more than 180 days, or where more than one victim is involved;
- Increase the fines for those who sell human beings for sex;
- Criminalize the actions of those individuals who receive profit from sex trafficking;
- Categorize sex trafficking with other “crimes of violence” to ensure that those who sell others for sex are prohibited from possessing firearms; and
- Add sex trafficking victims to those victims of “violent crime” who are protected from employer retaliation if they participate in criminal proceedings against their traffickers.

In the process of passing the amendments, The Advocates learned that for the new criminal penalties to take effect, changes were also needed in the corresponding sentencing guidelines. The Minnesota Sentencing Guidelines Commission was responsible for making a recommendation for the placement of the newly amended criminal statute in the sentencing guidelines. The coalition attended and provided written and oral testimony to the commission over the course of several meetings beginning in July 2009 and ending in December 2009. The commission delivered its final recommendations to the Minnesota Legislature in January 2010. The Minnesota Legislature held a hearing in February 2010 to review the commission's recommendations.

The process of documenting the gaps in the government response to sex trafficking in Minnesota began in 2007, two years after the initial passage of the state human trafficking law. The passage of the strengthened criminal law represents one step in the process of improving the response to human trafficking in Minnesota. Additional improvements particularly in the area of funding for victim services, training and public awareness are still needed. Despite these remaining gaps, Minnesota's state human trafficking law is regarded as one of the ten best in the United States by the Polaris Project. See: Polaris Project, [Top Ten Best and Ten Worst State Human Trafficking Laws](#), 2009.

Factors that contribute to success

Advocates should also examine the factors which contribute to success. According to the [Manual for Facilitators of Advocacy Training Sessions](#), published by the Washington Office on Latin America, success may be affected by external and internal factors. External factors affect non-governmental organizations and individuals chances of success in advocating for changes in public policy and laws affecting women and girls. Such factors include:

- Openness to democracy and respect for human rights;
- Social, economic and cultural equity;
- Decentralized government institutions and decision-making;
- Independent, decentralized and accessible media; and
- An open and transparent government.

Internal factors affect the non-governmental organizations attempting to make changes in public policy and laws affecting women and girls, either enhancing or hindering the chance of success. Internal factors include:

- Democratic structures and processes inside the organization;
- Ability to interact constructively with the government;
- Willingness and commitment to coalition building with other groups;
- Synchronization of short-, medium-, and long-term efforts toward an ultimate goal;

- Mission-based advocacy initiatives;
- Knowledge of the functioning of judicial, legislative, and executive branches;
- In-depth understanding of the political context;
- Access to research and information and the capacity to utilize it to inform policy-making;
- Education and capacity-building of leaders;
- Clearly defined and agreed upon roles and responsibilities of individuals and organizations involved; and
- Human and financial resources to accomplish the advocacy goal.

See: [Manual for Facilitators of Advocacy Training Sessions](#), Washington Office on Latin America, 15-17, 2001.

CASE STUDY: In Turkey, the women’s movement led the campaign for Law 4320: On the Protection of the Family over a period of 20 years to finally pass the law. Organizations such as Women for Women’s Human Rights (WWHR), the Purple Roof Women’s Shelter Foundation, and the Altindas Women’s Solidarity Foundation and others led and coordinated the efforts. While the law continues to face challenges in its implementation (See Opuz v. Turkey Case Study on page 14 above), the passage of the law represented a significant step forward at the time of its passage in January 1998. A number of factors contributed to the success of the women’s movement including:

- Exposure to the international human rights community,
- Participation in UN conferences addressing violence against women in Beijing and Vienna,
- The possibility and preparatory steps for European Union membership,
- Involvement of governmental and non-governmental representatives,
- Networking with other organizations in the women’s movement, and
- Acquiring advocacy and lobbying skills.

According to Dr. Hande Eslen-Ziya, the European Union (EU) and European Women’s Lobby (EWL) membership processes have significantly impacted women’s organizations in Turkey. Both the EU and EWL promote dialogue with civil society and compliance with gender equality standards promulgated by the EU. Dr. Eslen-Ziya also attributes the international human rights standards of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other United Nations conventions as helpful to the lobbying processes of women’s human rights advocates. See: Dr. Hande Eslen-Ziya, [The European Union’s Influence on Women’s Activist Groups’ Networking: A Comparison Between Turkey and Greece](#), Vol. 6, No. 5, Turkish Policy Quarterly, 2007; Barbara L. Rodriguez, Justice through Domestic Violence Legislation: Improving the Implementation of Turkey’s Law 4320 on the Protection of the Family, Journal of Public and International Affairs (2009) available at <http://www.princeton.edu/jpia/past-issues-1/2009/2.pdf>; Response from Leyla Pervizat, Independent Researcher in Turkey, February 2010.

Developing an advocacy strategy

Advocacy efforts must be both logical and flexible to achieve the desired result. Engaging stakeholders and coalition members in early conversations about objectives and goals achieves buy-in for the advocacy effort, and assists the group in articulating those goals and objectives. Advocates should:

- Clearly define objectives, demands, and target—who has the power to make the change;
- Organize activities aimed at achieving the objectives and building toward the final goal; and
- Plan the action and schedule for the effort recognizing that this plan may need to change after each step based on outcomes and feedback along the way.

Advocacy objectives should be SMART:

- Specific
- Measurable
- Achievable
- Relevant
- Time bound

See: [Making Rights a Reality: Campaigning to Stop Violence Against Women](#), Amnesty International, 11-12, 2004.

Strategy questions to answer

Advocates should answer the following questions when the advocacy goal involves a new or amended law protecting women and girls from violence. Understanding the legal obligations of the country will assist advocates in making arguments for legal reform.

- Has the government signed any relevant international treaties? Are there any monitoring mechanisms in those treaties?
- Are there any government policy statements (i.e. national plans) on the issue?
- Are there any government bodies that monitor or are responsible for the issue? If not, could there be?
- Are any Members of Parliament interested in the issue? Is there a sub-committee or committee in the legislature that is responsible for the issue?
- Are there any government officials interested in the issue? Is there a government ministry or department responsible for the issue?
- Have the political parties taken a position on the issue?
- How can policy makers be accessed? Are there any formal mechanisms of access? Are there any informal mechanisms of access?
- What or who influences the government position on this issue, i.e. businesses, other countries, financial institutions?
- Is the media influential on this issue? Which media is most influential? Are there particular journalists who cover this issue? Will the media care about this issue?
- How important is public opinion in the political process? Will working on this issue strengthen the role of the public in determining policy?
- Are there particular individuals who could influence this issue, such as academics, retired government officials, religious or community leaders?

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 11-12, 2005.

Articulate the strategy to be undertaken

Advocates should clearly articulate both the inside and outside strategies. The inside strategy is directed at those inside the legislature or parliament using arguments based on those who will either benefit or be opposed to the goal. The outside strategy is directed at those outside of the legislature or parliament who may influence those within the legislative body.

- Inside Strategy: Focuses on directly influencing decision makers
 - Who are the constituents?
 - Who will benefit when the goal is reached?
 - Why will these individuals benefit?
 - Who are the allies?
 - Who are the organized groups that will benefit?
 - What influence do they have that you don't have?
 - Can the allies endorse the goal, offer financial support and/or get the message out?
 - Who are the opponents?
 - Who will be opposed to the goal?
 - Are there organized groups of opponents?
 - Why are they opposed?
 - What are their arguments?
- Outside Strategy: Focuses on creating public awareness and mobilizing those outside the legislature that can influence decision makers
 - Who are the constituents?
 - Who are the allies?
 - Who are the opponents?

See: Women's Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 1997.

Leadership and organization

The success of advocacy depends in large part on the leadership and organization of those involved in the effort both those in formal and informal leadership positions. It is important to select an individual or two who have a passion for the issue and the organizational skills to accomplish the goal as the formal leaders. At the same time, the formal leaders need to recognize that other leaders will emerge from within the coalition and stakeholder groups, and that those leaders should be encouraged and supported in their work. At times, leaders may emerge whose goals are not in line with the overall advocacy strategy. When this occurs, it is important to discuss the diverging goals in private rather than in front of the target audience of the advocacy. The following leadership qualities should be sought:

- Ability to identify and initiate advocacy effort;
- Ability to inspire and attract interest;
- Ability to manage process; and
- Ability to mobilize support.

See: Women's Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 121, 1997.

CASE STUDY: The [Pacific Regional Rights Resource Team](#) (RRRT) of the Secretariat of the Pacific Community initiated a three-year project in January 2009 entitled “Changing Laws, Protecting Women: Lobbying for Legislative Change in Violence Against Women.” The goal of the project is to improve legislation to protect women through the implementation of lobbying campaigns for violence against women (VAW) and family law reform in six Pacific Island Countries: Samoa, Tuvalu, Tonga, Kiribati, Solomon Islands, and Cook Islands. At the same time, the RRRT recognizes that passing laws alone will not ensure that women are protected from violence. Rather, the RRRT will build the skills within the various countries to ensure that the laws are effectively implemented and monitored. The RRRT has begun work on each of the three major outcomes, which are:

- Outcome 1: Strong and strategic lobbying campaigns to stimulate and support change on Family and VAW legislation;
- Outcome 2: Model legislation considered and adapted for each participating Pacific Island Country (PIC) for use in legislative lobbying; and
- Outcome 3: Materials produced to assist and inform current and future lobbying strategies in legislative responses to violence against women and children and family law for the PICs.

Since the project’s inception, the RRRT held a regional meeting in Nadi, Fiji attended by representatives from civil society and the government of nine Pacific Island Countries as well as ten observers. The RRRT has also identified core lobbying groups in the Solomon Islands, Nauru, and Kiribati following national consultations. Approximately 10-15 lobbyists per country will be trained to engage in policy advocacy in early 2010.

The RRRT recruited five country coordinators in partnership with the respective country’s governmental and non-governmental representatives and conducted an orientation and training in August 2009, which included a format for the collection of baseline data. In Kiribati, the RRRT worked with the country coordinator to collect baseline data.

Training has been provided to VAW regional stakeholders including lawyers, members of parliament, the Pacific Islands Law Officers’ Network, and the Pacific Parliamentarians on Population and Development. Training included a presentation of model legislation on VAW in comparison to the current status of legislation in the participating countries. While the project is not yet complete, it serves as an example of regional approach to legal advocacy work on violence against women.

See: “Changing Laws, Protecting Women: Lobbying for Legislative Change in Violence Against Women,” Project Document, 11 November 2008; “Changing Laws, Protecting Women: Lobbying for Legislative Change in Violence Against Women,” Progress Report, 31 January 2010 (on file with author).

Communication and education

- Advocates must craft a message that resonates with the public and with the target audience of the advocacy effort. The message should be general, clear, and appeal to a wide audience. A well-defined message should engage those at the center and around the periphery of the particular topic. For example, a message stating that “women and girls deserve to be free from violence” will engage those working on any of the forms of violence against women and girls or in the context of sex trafficking “girls are not for sale” or “girls should be celebrated not sold.” See: [Girls Educational & Mentoring Services](#). The message should be based on fact, but should not be overly technical.
- Throughout the advocacy process, advocates should ensure that:
 - The message reaches the public;
 - The message reaches the target audience (i.e. policy makers, NGO, government officials);
 - Necessary training and skills are obtained; and
 - Political alliances are formed.

See: Women’s Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 121, 1997.

- Advocates should communicate the message using media strategies appropriate for the particular advocacy effort. A media strategy should be developed early in the overall planning for the advocacy effort. The media strategy should rely upon public opinion data if possible, analyze past press coverage, and continually review the effectiveness of the message. See: Women’s Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 126-127, 1997.
- Both traditional and new media can be effective depending upon the audience targeted with the advocacy message. Traditional media outlets and tactics such as radio, press releases, briefings, letters to the editor and opinion pieces should be utilized. New and emerging technologies for the dissemination of information such as the internet, social networking sites and blogs should also be used. A balance between these types of communication should be struck depending upon the particular local context. See: Tips for Effective Media Strategy to Promote Advocacy Activities, [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 17, 2005.

PROMISING PRACTICE: Like other advocacy activities, communication should be based on research. In the United States, The Opportunity Agenda has undertaken extensive public opinion research to determine how Americans from different backgrounds view human rights issues and messages. Using surveys and focus groups, the organization has developed research-based messages promoting specific human rights issues that are designed to resonate with particular audiences. The research and resulting strategies have been compiled in [Talking Human Rights in the United States: A Communications Toolkit](#). The research conducted by The Opportunity Agenda allows for messages to be broken out based on age, income, and other factors. This helps advocates determine which messages to bring to a given audience, and makes it more likely that a human rights advocacy topic will resonate with a particular group. The Opportunity Agenda identifies four key questions that should be asked when crafting human rights messages: (1) what is the value at stake, why should the audience care? (2) what is the problem? using statistics and stories to demonstrate, (3) what is the solution? offering a positive way the problem can be addressed, and (4) what can the audience do? Offering specific and concrete ways that the audience can take action.

CASE STUDY: The United Nations Secretary General launched the UNiTE Campaign to End Violence Against Women in 2008. The campaign identified five goals, which are clearly articulated, and have been communicated using a variety of media. The campaign is utilizing Facebook, Twitter, Flickr and YouTube to disseminate information; but is also working with governments, civil society, women's organizations and the private sector to share good practices. See: [United Nations Secretary-General's Campaign UNiTE to End Violence Against Women](#), 2008.

Mobilization and action

The mobilization and action phase of the advocacy process, which will be explored in greater detail later in this module; is the natural outcome of the strategic planning phase and is inextricably linked with communication and education throughout the advocacy process. During this phase, the following activities will occur:

- Implementation of the advocacy strategy and plan;
- Legal and political actions;
- Interested and affected groups take action to secure change; and
- Monitoring and evaluation of the process.

This phase of the advocacy process is in the section entitled "Taking Action."

Engage in self-assessment and adaptation of advocacy strategy

To achieve success, advocates must be willing to continuously adapt the advocacy strategy and lobbying tactics as new information, progress and setbacks provide feedback on the effectiveness of the effort. For example, with legislative advocacy because of the number of variables involved in passing new legislation or amending existing legislation, advocates must be flexible while at the same time persistent in moving forward with the objectives. Advocates and lobbyists should:

- Know the legislative process and procedure and negotiate it constantly;
- Seek effective champions and make sure they receive credit among their peers and in public throughout the process;
- Remain true to principles, but be willing to be flexible on the details such as timing and the scope of the legislation's provisions or methods of implementation;
- Build support and intensity, while choosing moves carefully;
- Engage in vote counting constantly and learn how one member's vote affects another member's vote while also assessing the legislative body's culture;
- Evaluate selected activities for potential risks to constituents;
- Mobilize constituents based on vote counts to influence legislators at the critical points in the advocacy effort;
- Establish the NGO as an authoritative and credible resource to gain standing with legislators and other decision makers – remember that one of the most important accomplishments is to have a legislator solicit advice on an issue;
- Evaluate and modify the message for people working at the grassroots level on the issue – it needs to be understandable and not too technical;
- Refine tactics and strategies so that ineffective ones are discarded and new approaches incorporated into evolving campaigns; and
- Always listen carefully – hear what the grassroots, legislators, media, and community (local, national, regional and international) are saying and pay attention to what they say, weighing it and making strategic changes as needed.

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 12, 2005; and Women's Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 1997.

CASE STUDY: In Mongolia, advocates began lobbying for the passage of a law against domestic violence in 1996 encountering numerous challenges during the eight year process of securing its enactment. The [Law on Combating Domestic Violence](#) was unanimously adopted by the Parliament of Mongolia on May 13, 2004. Approximately a year after the passage of the law, which applies to family members and relatives, the death of a boy who had previously been beaten by his step-father led to several other changes in the government's response to domestic violence. The [Mongolian National Center Against Violence](#) (NCAV) lobbied the government to create a national program to address domestic violence, which led to partial government funding for [shelters](#). The NCAV also asked the Mongolian Supreme Court to review the Law on Combating Domestic Violence and interpret the provisions and provide guidance to practitioners. The Supreme Court declared that "the issuance of a restraining order for the perpetrator shall not require proof of physical damage to the victim and that separation measures mean that the court require the perpetrator not to live with the victim(s) in the same home." See: Response from the [National Center Against Violence](#), 12 March 2010; [Mongolia Adopts Domestic Violence Bill, StopVAW](#), 8 June 2004; [Mongolia Adopts Domestic Violence Bill, UNIFEM Currents Newsletter](#), May/June 2004.

Measure progress toward goal and achievement of objectives

The final phase of the advocacy process is the measurement of progress toward the goals and objectives. In some cases, the progress made will not necessarily be a tangible result; but rather may be the strengthening of relationships with the target audience and among coalition members or stakeholders. In other cases, the progress will be tangible, such as the passage of a new law against domestic violence or human trafficking. Progress may also be measured incrementally with the passage of one component of a larger legislative package or in the drafting and implementation of a new policy or procedure. For example, a law enforcement policy mandating the screening of individuals charged with prostitution offenses may ultimately lead to progress in identifying victims of sex trafficking.

Understanding the government structure, legal obligations, and legislative process

Overview

- If the advocacy effort will call upon a government entity to make a change in current law, policy, procedure or regulation; then those responsible should thoroughly review the structure of the government in order to understand the system, procedures and power bases which will affect the effort. Differences in the executive, legislative and judicial branches of government will affect advocacy efforts. Advocates should thoroughly examine the balance of power between the branches of government and the designated role for each branch. Such study will help to inform the advocacy strategy.
- For example, when working on a draft domestic violence law in the Republic of Armenia, advocates examined the form of parliamentary government, the procedural rules of the parliament, and the typical and most workable ways of introducing legislation including through individual parliamentarians or through executive branch officials.
- In some countries, not all parliamentarians may be elected. Rather, they may be appointed by a political party, in which case the ability of citizens to impact those parliamentarians may be lessened. On the other hand, advocates with strong ties to a particular party may find they have the ability to discuss the advocacy goal with leaders in the party who may in turn, ask parliamentarians in that same party to support the advocacy goal. Whether legislators are elected directly or indirectly or appointed by political parties will influence how much NGOs may influence the process and at what point in the process NGOs may intervene.

Compliance with national, regional and international laws

- In addition to understanding the structure of the government, advocates should conduct a review of the particular country's compliance with international, regional and national laws. Such compliance, or the lack thereof, may form an excellent foundation for arguments for the proposed advocacy goal. For example, while many countries have signed the [Convention on the Elimination of all forms of Discrimination Against Women](#) (CEDAW), and may also have signed a regional treaty prohibiting violence against women such as the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women](#) (Belem do Para); they may not have ensured that the principles of such conventions were embodied in existing or new national or local laws.
- A state must protect women and girls in its territory from violence whether it is committed by a public or private actor. States must also comply with international standards to protect individuals from violence during peacetime or during conflicts and war. See: [Making Rights a Reality: Campaigning to Stop Violence Against Women](#), Amnesty International, 8, 2004. A state may not use culture as a justification for violence against women and girls.

- Advocates should review the following key legal documents prior to working to change legislation on violence against women and girls in any country. These documents may provide both legal arguments for a proposed change and strategies for advocacy:
 - [National Constitution](#)
 - [National Election Law](#)
 - [National Immigration and Asylum Law](#)
 - [National Laws on Violence Against Women and Girls](#)
 - [National Plans to address Violence Against Women and Girls](#)
 - [National or Local Criminal/Penal Codes](#)
 - [National or Local Criminal Procedure Codes](#)
 - [National or Local Civil Codes](#)
 - [National or Local Administrative Codes](#)
 - [Official Policies of the Police, Prosecutors and Courts](#)
 - [Regional Treaties and Agreements](#)
 - [European human rights system](#)
 - [Inter-American human rights system](#)
 - [African human rights system](#)
 - [Arabic and Islamic human rights instruments](#)
- [International Treaties and Agreements](#)
 - [International Human Rights Law](#)
 - [International Humanitarian Law](#)
 - [International Criminal Law](#)
- Advocates should carefully analyze each of these categories of legal instruments asking critical questions about the protection of the human rights of women and girls provided in existing legislation, the extent to which the government is upholding or denying those rights. Advocates may review a number of important questions to ask about national legislation, international human rights law, international humanitarian and criminal law, and regional human rights treaties. See: [Making Rights a Reality: Campaigning to Stop Violence Against Women](#), Amnesty International, 8-11, 2004.
- Advocates may also want to review any national laws on freedom of access to information available through the [online network of freedom of information advocates](#). This online resource has country pages, which provide links to the relevant sections of the constitution and national laws on the topic. See: [The Online Network of Freedom of Information Advocates](#), 2009.
- Global Rights, in [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), discussed the freedom of access to information law and its power to gain access to governmental information needed in advocacy efforts. While recommending that the first request should be an informal one, through established contacts within the government, subsequent requests may rely upon such a law. See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 43, 2005.

CASE STUDY: The case of Uganda v. Matovu highlights the important role played by the courts in ensuring that national laws, including at the level of rules and procedures, comply with international legal obligations. In Uganda, a common law rule dictated that when a victim claims that a defendant has committed a sexual offense against her, the court must recognize that it is dangerous to act upon the uncorroborated evidence of the victim. Accordingly, the court must undertake additional verification so as to satisfy itself that the victim is a truthful witness. The judge in the case of Uganda v. Matovu, ruling on the issue of a young man accused by a woman of “defilement” found that this rule of evidence was discriminatory against women and was based on a biased assumption that women and girls are likely to lie about sexual violence. The judge recognized that this rule was a violation of Uganda’s obligation not to discriminate under CEDAW as well as a violation of Uganda’s constitutional guarantee of equal protection of the law. The defendant in the case was sentenced to ten years imprisonment. This case makes clear the importance of considering a wide range of laws, policies, and rules for compliance with international law. In particular, ensuring that judges have accurate information about how laws, policies, and procedural rules may violate international obligations is critical to protecting women from violence. See: [Jurisprudence of Equality Program Decisions](#), [International Association of Women Judges](#); Global Justice Center, Legal Tools for the Establishment of Gender Equality through International Law, 18 (2007).

Understanding the legislative process

In addition to understanding the structure of the government and compliance with international, regional and local laws; advocates whose end goal is a new or amended law should ensure they understand how a bill becomes a law and the detailed procedural rules applicable to the process.

CASE STUDY: In the UK, a special committee of the House of Lords focuses on determining how well the legislative process is functioning. The Select Committee on the Constitution makes recommendations to Parliament and ministries on how to improve the functioning of the legislative process, including how to ensure that public engagement is maximized. These recommendations form a strong basis for advocacy by groups who wish to be able to influence legislation in the UK or in any legislative process. Several of the recommendations focus on how to engage with the public on pending legislation. The House of Lords recommends that:

- Government departments undertake reviews of legislation as they are moving through parliament and that these reviews include consultation with interested civil society groups.
- Extending time for scrutiny of bills.
- Reducing the number of bills put before the legislature.
- Requiring an evidence-taking inquiry at some point during the consideration of every bill to ensure that interested parties can express their views.
- Requiring that evidence-taking sessions are held in each region of the country, not just in the capital.
- Making parliamentary information widely accessible to the public through media, in clear language designed for a lay person.
- Legislative committees should be encouraged to commission and consider the results of public opinion polls.
- Requiring post-legislative review and scrutiny of bills on a regular cycle.

The House of Lords report also identified several positive practices that have already been instituted to make the legislative process more accessible to ordinary citizens in the UK. For instance, Parliament has expanded avenues for public consultation and requires that documentation used in the consultation process is written in plain language accessible to a lay person. See: [Parliament and the Legislative Process: Volume 1 Report \(2004\)](#).

How a bill becomes law

Advocates should fully understand the process of enacting new laws. Advocates must know how a bill becomes a law and the rules of procedure. If advocates fail to follow a particular procedural rule, significant challenges may cause the advocacy effort to stall or be derailed. The information is typically available through the national parliament. If such information cannot be easily found, advocates should consult with the national laws on freedom of access to information available through the [online network of freedom of information advocates](#).

The following list represents examples of how a bill becomes a law in several different countries:

- Armenia: [Rule of Procedure of the National Assembly, The Republic of Armenia](#), 2007.
- Bulgaria: [How Does a Bill Become an Act, National Assembly of the Republic of Bulgaria](#), 2009.
- Canada: [Legislative Process, House of Commons](#), 2006.
- Hungary: [The Legislative Procedure \(Chart\), Parliament of Hungary](#).
- Kenya: [The Legislative Process, Parliament of Kenya](#), 2006.
- South Africa: [The Legislative Process, Parliamentary Monitoring Group](#), Since 1996.
- Spain: [Legislative Process in A Guide to the Spanish Legal System](#), by [Olga Cabrero](#), 2002.
- Taiwan: [Legislative Procedure, The Legislative Yuan of the Republic of China](#), 2004.
- United States of America: [How Our Laws Are Made, the United States Library of Congress](#), 2007.

CASE STUDY: Advocates in Albania discovered the importance of understanding the procedural rules when they attempted to introduce a draft law on violence in the family to the Albanian Parliament. The Albanian approach to legal reform on domestic violence was first to amend the family code, which included the introduction of an order for protection allowing the court to order the abuser to stay away from the home shared with the victim for a period of up to three years. Advocates found that the language of the law was not specific enough to ensure its effective implementation. To remedy this problem, the Citizen’s Advocacy Office (CAO), an Albanian NGO, was funded by USAID to draft a specific law on violence in the family. CAO involved women’s NGOs within the Network against Gender Based Violence and Trafficking to participate in the process. CAO also initiated a public awareness campaign to generate public support for the new draft law on violence in the family. CAO gathered 20,000 signatures and presented those signatures with the draft law to the Albanian Parliament in the summer of 2006. However, the new draft law had not been properly registered under the rules.

Several international agencies and organizations, including the Embassy of The Netherlands, the Organization for Security and Cooperation in Europe (OSCE), USAID, and the Center for Legal Civic Initiatives supported by World Learning, stepped in to advocate for the approval of the new law. The law was properly registered and presented to the Albanian Parliament for approval. Several experts who had been involved in the process followed the law through various parliamentary hearings until it was eventually approved on December 18, 2006. The Law no. 9669 “On Measures against Violence in Family Relation” entered into force on June 1, 2007, which was the first citizen’s bill presented to the Albanian Parliament.

Once the law was in effect, legal experts worked with the United Nations Development Program (UNDP) to ensure that implementing regulations were drafted and that governmental ministries had made commitments to endorse the regulations. By the end of 2008, each of the five ministries – the Ministry of Labor, Social Affairs and Equal Opportunities, the Ministry of the Interior, the Ministry of Justice, the Ministry of Health, and the Ministry of Education – had signed a memorandum of understanding on the implementation of the law. One of the NGOs involved in the process of advocating for the law against violence in the family, [Refleksione](#), attributed the eventual success to the open and consultative process and involvement of women’s NGOs with experience in working with the victims of domestic violence.

See: Response from [Refleksione](#) (February 2010); [The Women’s Legal Rights Initiative Final Report, USAID](#) (January 2007).

Understanding the role of NGOs in the legislative process

- Non-governmental organizations (NGOs) often play a critical role in advocating for changes in law, policy, procedure and administrative rules. NGOs bring the stories of the individuals they serve to the process. These stories form an important part of the evidence needed to convince policymakers of the needed changes.
- NGOs should carefully analyze the ability of the organization to lead an advocacy effort assessing its strengths and weaknesses. NGOs should also ask whether it is appropriate for their organization to take a lead role on the particular advocacy effort being considered. For example, are other NGOs more experienced or well-established in advocating for the particular advocacy effort? What are the ways in which the NGO may support efforts already in progress? What are the ways in which the NGO may initiate new efforts to complement the efforts in progress? NGOs may choose to lead, support, remain neutral, and in some cases, oppose legislation. Advocates should discuss the position their NGO will take on any given piece of legislation internally before making that position known externally.
- Before embarking upon an advocacy effort, advocates should ask themselves the following questions and address the following issues:
 - Are there any legal limitations on NGO participation in legislative advocacy?
 - Are there any practical limitations on NGO participation?
 - Other issues to be addressed:
 - The rules for NGO participation in the legislative process differ in every country. For example, in Bosnia and Herzegovina, members of parliament or government ministries or the president may submit draft laws, but NGOs either cannot or typically do not submit draft laws.
 - The permissible role for NGOs will have an enormous impact on their ability to advocate for laws.

- In some cases, NGOs may participate in the drafting process but NOT in the introduction of the legislation.
- In some cases, then, NGOs must find allies and champions who are allowed to introduce legislation before the parliament.
- NGOs may have difficulty accessing information on draft laws, but can sometimes use national laws on freedom of access to information to assist or the public relations office of the parliament.

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 43, 2005.

CASE STUDIES:

Civil Society Legislative Advocacy Center – Nigeria

In many nations, and particularly those with newer democracies, NGOs can play an important role in educating legislators and staff on their responsibilities as members of a democratic government. Building the capacity of members of the legislature or parliament to scrutinize proposed laws, interact with civil society, and exercise oversight of the executive branch is critically important. The [Civil Society Legislative Advocacy Center](#) in Nigeria focuses on these types of training activities, with a specific focus on how legislation impacts the Millennium Development Goals. Trainings conducted by CISLAC have focused on the importance of legislative aids, power relations between government bodies, constituent relations, constitutional provisions of legislative committees, providing ways to make room for civil society intervention in budget policy, improving the level of productivity of National Assembly members including the planning of pro-poor policies, the role of committees in lawmaking, oversight, constituency relations, and good governance practices.

UNIFEM and OSCE/ODIHR: One way in which local and international non-governmental organizations may participate in the legislative process is to assist in drafting legislation to address violence against women and girls. Maintaining good working relationships with government ministry officials and others tasked with drafting such laws may enable local and international non-governmental organizations (NGOs) to provide feedback on draft laws. UNIFEM and OSCE/ODIHR may also be asked by national governments to comment on draft laws addressing violence against women and girls and may consult with local and international NGOs in doing so. By maintaining contact with regional and country offices of such organizations, NGOs may be able to insert themselves into the process of drafting legislation thereby ensuring the promotion of the rights and needs of victims.

CASE STUDY:

NGOs can also ask for assistance from experts on drafting legislation on violence against women. The Advocates for Human Rights (The Advocates), a non-governmental organization based in Minnesota, United States has a long history of reviewing draft domestic violence laws based on partnerships formed over the past fifteen years with non-governmental organizations and government ministries in Central and Eastern Europe (CEE) and the Former Soviet Union (FSU). The Advocates has recently reviewed the draft laws of [Azerbaijan](#), [Armenia](#), [Kazakhstan](#), [Montenegro](#), and [Tajikistan](#). The Advocates has also commented on the draft domestic violence laws of Albania, Bosnia and Herzegovina, Lithuania, Mongolia, Poland, Romania. See: [Commentary on National Laws](#), StopVAW, 2010.

In providing comments on draft laws, The Advocates draws upon international experience and experience in the state of Minnesota where the domestic violence law has been in effect for thirty years and has been amended each year to improve the protection of victims, the prosecution of the perpetrators, and the prevention of domestic violence.

The Advocates reviews the draft law in light of international standards and best practices in the field of violence against women and girls. The Advocates also researches and reviews any work by the [Special Rapporteur on Violence Against Women](#) undertaken in the requesting country, and concluding observations by the various treaty body committees. Understanding the requesting country's efforts to draft laws to address violence against women and girls as well as the international human rights community's assessment of the efforts provides a context for The Advocates' commentary.

The Advocates carefully reviews each provision of the draft law. The Advocates evaluates each provision in terms of how it meets international human rights standards generally, as well as how it meets the standards laid out in UN model legislation, and how it reflects lessons learned in the field of legal reform on domestic violence internationally. The Advocates offers detailed comments on each provision pointing out concerns and providing constructive and practical suggestions to the requesting country for use in revising the draft law. As appropriate, The Advocates highlights case examples of successes and challenges in other countries to provide the requesting country with a sense of the consequences of enacting certain provisions. The Advocates also cites research to support the constructive criticism of any existing provisions.

Armenia

In early April 2008, The Advocates reviewed Article 2 of the DRAFT domestic violence law of Armenia. In written commentary on the law, The Advocates stated:

Article 2 includes the following language which should be omitted from the Law. “Specific behavior of a victim of domestic violence is willful behavior of the probable victim of domestic violence, which promotes, creates conditions for committing that violence.” Such language does not promote victim safety and offender accountability, nor does it communicate a zero tolerance for violence message. These should be the primary goals of any law or government intervention in domestic violence cases. Instead, this language implies that the victim may be held accountable for the violence against her. This is extremely dangerous language to include in a law which purports to protect victims of violence. Similar language has been included in other domestic violence laws in the region and has resulted in serious harm to victims of violence.

For example, the Ukrainian government enacted a domestic violence law in 2002. After five years of implementing this law, the West Ukrainian Centre “Women’s Perspectives” published an assessment of the experience with the law. Their assessment addressed several problems with the Ukrainian law and its implementation, including, but not limited to, a provision in the law on provocative behavior. In particular, the report addressed the problems of official warnings about provocative victim behavior being issued based on the perpetrator’s explanation alone, and issuing such warnings to discourage victims from requesting police assistance in the future. The report concluded that “the legislative norms on the victim behaviour and liability for such behaviour violate human rights of domestic violence victims and are discriminatory against women....” H.Fedkovych, I.Trokhym, M.Chumalo, *Combating Domestic Violence: Ukrainian and International Experience* (2007).

In late April 2008, The Advocates reviewed a subsequent draft of the law from the working group of government and non-governmental representatives. The second draft of the law had removed the language referring to “specific behavior of a victim of domestic violence” that “promotes, and creates conditions for committing that violence.” The Advocates noted that this “change [was] a significant and vital step toward ensuring victim safety and promoting offender accountability.” See: [The Advocates for Human Rights Comments on The DRAFT Law of the Republic of Armenia on Domestic Violence](#), StopVAW, 14 October 2008.

The [Women’s Rights Center](#), a non-governmental organization in Yerevan, Armenia continues to advocate for the passage of the domestic violence law in consultation with a working group they established. The working group consists of representatives of the Ministry of Labor and Social Affairs, the Ministry of Health, the Police, the Forensic Medicine Center of the Ministry of Health, Yerevan City Administration, courts and others. In 2009, [UNFPA Armenia began an analysis of national legislation](#) to determine any gaps in the protection of women from discrimination and violence. The UNFPA experts issued legal conclusions, including that “Domestic violence, the most prevalent form of gender-based violence, is not penalized as a specific criminal offense. Deficiencies in existing legal provisions, procedures and remedies impede the rights of victims to safe and prompt access to justice.” (Response from the [Women’s Rights Center](#) to outreach letter, March 2010).

Kazakhstan

According to the Institute of European Law and Human Rights, legislation concerning violence against women was initially drafted in 2000. Around this same time, Kazakhstan signed or acceded to a number of international human rights conventions: [Convention on the Elimination of All Forms of Discrimination against Women](#) (Acceded to on 26 August 1998); [International Convention on the Elimination of All Forms of Racial Discrimination](#) (Acceded to on 26 August 1998); [Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment](#) (Acceded to on 26 August 1998); [International Covenant on Civil and Political Rights](#) (Signed 2 December 2003); [International Covenant on Economic, Social and Cultural Rights](#) (Signed 2 December 2003). See: Response from Institute of European Law and Human Rights, February 2010; [Kazakhstan International Treaties, StopVAW](#), The Advocates for Human Rights.

Since 2000, the Republic of Kazakhstan has drafted a national plan to address the improvement of the position of women and gender equality for 2006-2016 and joined the United Nations Secretary General's campaign to [Say No – UNiTE End Violence Against Women](#). The Republic of Kazakhstan has also worked in cooperation with international organizations, including the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM) and the Organization of Security and Cooperation in Europe (OSCE). See: Response from Institute of European Law and Human Rights, February 2010.

In August 2008, The Advocates for Human Rights were invited to review the domestic violence law of Kazakhstan when they were in draft form by the UNIFEM Regional Office in Almaty, Kazakhstan; and again in May 2009 by the [Organization for Security and Cooperation in Europe](#) Office for Democratic Institutions and Human Rights (OSCE/ODIHR) in Warsaw, Poland. OSCE/ODIHR organized meetings with members of parliament and representatives of women's non-governmental organizations in Astana, Kazakhstan in June 2009. The Advocates traveled to Astana to these meetings where discussions of the draft law occurred. OSCE/ODIHR's final opinion was published on 27 October 2009. While a few concerns remained, the law had been improved to remove the "official notice" of the impermissibility of committing domestic violence, and the length of protection orders was extended from 5 to 30 days on application to the prosecutor. On December 5, 2009, the President of Kazakhstan signed the Law "On prevention of domestic violence" and the Law "On amendments to some legislative acts of Kazakhstan on the issues of prevention of domestic violence." See: [Comments by The Advocates for Human Rights on the Draft Law of the Republic of Kazakhstan "On Counteracting Domestic Violence,"](#) 22 May 2009.

Taking action

Review research, gather testimonials and anticipate and know the arguments

The first step in taking action should be to review the research and analyses, best practices, legislative process and procedures, legislative history, and other laws on the particular issue to be addressed. At the same time the initial step is taking place, advocates may begin a more formal or detailed collection of testimonials and stories specific to each objective in the overall advocacy strategy. Advocates should seek out stories from individuals affected by the issue, NGOs working to address the issue, and government agencies responsible to address the issue. (See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 14, 2005; Women's Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 1997)

CASE STUDY: In 1997, the [Women's Institute for Leadership Development \(WILD\) for Human Rights](#) formed a coalition devoted to bringing human rights standards to San Francisco, California USA. As a result, in April 1998, San Francisco became the first city in the United States to pass a law implementing the principles underlying an international human rights treaty to impact public policy. WILD advocated for the passing of the United Nations [Convention on the Elimination of all forms of Discrimination Against Women](#) (CEDAW). WILD framed their message about CEDAW in the language of discrimination, a concept that is much more familiar in the United States than is human rights. Public meetings about discrimination against women and girls were convened in which members of the public could discuss their experiences. The law passed in San Francisco requires city departments to review employment policies, and the delivery of services within a context of gender and human rights. Following San Francisco's lead, many other cities across the US are working on passing similar legislation.

Advocates should also anticipate and know the arguments against the position and develop responses based on fact and reason. Reference to best practices, research, and experience from other jurisdictions is often compelling to policy makers. It is useful to practice responding to the arguments with colleagues to prepare for any formal hearings where objections are likely to be raised. Advocates should be able to explain how others, including legislators, will benefit from supporting the issue both in private meetings with stakeholders and others and in public forums. Advocates should identify and contact decision makers who will likely support the position or take an interest in the issue and meet with these individuals privately before public hearings on the issue.

CASE STUDY: In 2006 the Coalition Against Trafficking in Women and the European Women’s Lobby Trafficking published a handbook that explores the links between prostitution and human trafficking. [The Links between Prostitution and Sex Trafficking: A Handbook](#) analyzes the arguments that many supporters of legalizing prostitution use and refutes them with data, references, country-based observation, media reports and interview information. The handbook is organized in a point-counterpoint fashion to allow advocates to readily respond to arguments of those who wrongly claim that legalizing prostitution will help eliminate trafficking and protect women. For example, the handbook notes that “Claims that legalisation is necessary to safeguard the health of women are used to disguise the reality that it is the health and safety of the customer which the industry seeks to protect. There are no ‘safe zones’ for women in the sex industry.” It goes on to provide, among many others, this counterargument: “Women consistently indicate in research that prostitution establishments did little to protect them, regardless of whether the establishments were legal or illegal. In the Netherlands where prostitution is legal 60% of prostituted women suffered physical assaults, 70% experienced verbal threats of physical assaults, 40% experienced sexual violence and 40% had been forced into prostitution or sexual abuse by acquaintances.” These types of counter arguments are critical in making a case as an advocate and ensuring that your advocacy effort does not get side-tracked by arguments that sound reasonable, but are ultimately harmful to women and girls.

Drafting the bill

When the goal of the advocacy effort is a new or amended law protecting women and girls from violence, advocates should research whether NGOs may participate in the actual drafting of the language of the legislation. In some countries, NGOs may participate whereas in others, the drafting is left to those in official government positions within the various ministries.

In countries where NGOs may participate in drafting legislation, advocates should begin by describing in plain language the problem to be addressed and what the law should do to address the problem. Advocates may also use examples of language in laws from other jurisdictions, but should ensure that the language is evaluated for its adherence to best practices in protecting women and girls from violence. Advocates should also consult with attorneys with experience in drafting laws to ensure that the draft laws are both technically and legally correct. Advocates should make sure that attorneys who assist in the drafting are faithful to the intent of the legislation. Advocates and attorneys must be willing to listen and learn from each other during the process of drafting legislation so that the language reflects the need identified by the advocates, but also reflects compliance with both substantive and procedural legal principles.

CASE STUDY: When reviewing potential changes to improve Minnesota’s sex trafficking laws, advocates learned that prosecutors had concluded that the existing state criminal law prohibiting the “receiving, recruiting, enticing, harboring or providing by any means an individual to aid in the prostitution of that individual” did not have strong enough penalties. In fact, prosecutors were opting to charge other criminal offenses rather than using the state human trafficking law. Advocates worked closely with government representatives, prosecutors, law enforcement and service providers to draft language to strengthen the law by increasing the criminal sentence where the trafficker was repeating the trafficking offense, inflicting bodily harm on the trafficking victims, holding victims for more than 180 days, or trafficking multiple victims. Advocates worked with attorneys in the Minnesota Legislature to ensure the draft legislation was in the correct form including omitting a redundant provision in existing law, as was recommended by one of the attorneys working in the legislature.

Policy and systems change

- Sometimes the advocacy goal is not a new or amended law, but rather improved implementation of a law, a shift in public policy, government policy, or even a shift in the way the government operates. Advocacy on the policy level may target change at a national level or at a local level. The former would likely target those making the law, whereas the latter would more likely target those responsible for enforcing the law.
- An example of advocacy at the national level is the [Recommendations for Fighting Human Trafficking in the United States and Abroad Transition Report for the Next Presidential Administration](#) by the Action Group to End Human Trafficking and Modern Day Slavery, 2008. The Action Group is comprised of: the Alliance to Stop Slavery and End Trafficking, Coalition to Abolish Slavery & Trafficking, Free the Slaves, International Justice Mission, Not For Sale Campaign, Polaris Project, Ricky Martin Foundation, Solidarity Center, and Vital Voices Global Partnership. These organizations worked collaboratively to analyze the existing human trafficking policies of prevention, protection, and prosecution and made recommendations for improvements to the Department of Justice, the Department of State, USAID, the Department of Labor, the Equal Opportunity Employment Commission, the Department of Health and Human Services, Homeland Security and Immigration and Customs Enforcement, and the Department of Defense. These recommendations were made in November 2008 to President-Elect Barack Obama.
- An example of advocacy at the local level is the effort to encourage law enforcement to adopt "probable cause" arrest policies. These policies enable police officers to make arrests for misdemeanor level domestic assaults without directly witnessing the crime. See: [Law Enforcement Reform Efforts](#), StopVAW, The Advocates for Human Rights, 2009.

- An example of advocacy to improve the implementation of laws is the [St. Paul Blueprint for Safety](#), an inter-agency reform effort that focuses on the responsibilities of criminal justice agencies in protecting victims of domestic violence. The Blueprint includes specific guidance for every agency, including what victims need to be safe, what workers need from each other to do their jobs, and what is required by each worker and agency to hold an offender accountable. See [Case Study: St. Paul Blueprint for Safety](#).

Coalition building

- Advocates should invest time in building and maintaining strong relationships with all sectors that have interest in or may be impacted by the particular advocacy effort. While it may be tempting to work independently toward an advocacy goal given the time and effort required success is more often achieved when such entities join together.
- Advocates should consult with national and international experts who may offer advice, as well as constituents and stakeholders impacted by the advocacy goal. Advocates may want to engage these experts, constituents, and stakeholders in the advocacy coalition as appropriate. Advocates should also identify and talk with potential NGO partners or allies. Once coalition partners are identified and invited to participate, the lead NGO for the advocacy effort should organize a face-to-face meeting of all those involved.
- During the initial meeting, coalition partners should define common goals and strategies of the advocacy coalition and establish a decision-making, meeting, and communications plan. In addition, advocates should:
 - Determine which member of the coalition will take the leadership role;
 - Define roles of each coalition member;
 - Clarify financial resources available for the efforts;
 - Clarify how often the coalition will meet;
 - Clarify how often and in what form coalition members should communicate;
 - Share draft legislation;
 - Circulate position papers; and
 - Organize informational briefings to integrate more NGOs into the coalition.
- Once the coalition is established, advocates should ensure that time and resources are devoted to maintaining relationships with coalition members as well as broadening the network of influence with the following individuals and organizations:
 - Government officials
 - Non-government organizations (NGOs)
 - The public
 - Legislators or members of parliament
 - The media

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 15, 2005; Women's Human Rights Step by Step, Women, Law & Development International and Human Rights Watch, 1997.

CASE STUDY: The Lawyers Collective in India was established in the early eighties with a mandate to realize rights of marginalized groups through advocacy and public interest lawyering. The LCWRI is a unit of the Lawyers Collective that was created in 1998 with a grant from the Ford Foundation. The mandate of the LCWRI was to provide legal aid to survivors of domestic violence, sexual harassment and sexual assault. At the time the LCWRI was established, India did not have a separate law on domestic violence. Criminal provisions on cruelty within marriages and civil provisions on divorce were used to address violence within the home. The limitation of using these laws was that it did not provide any relief, in terms of shelter or maintenance, to women. As a result of this women would frequently be rendered homeless and destitute if they decided to take legal recourse to address domestic violence.

LCWRI identified the need for a civil law on domestic violence, aimed at providing relief and injunctive orders to women facing violence within the home. The LCWRI identified the need for this civil law from its practice of providing legal aid to women. It then proceeded to draft the civil law based on research into national laws including those of other countries, jurisprudence developed by national courts and international adjudicatory fora as well as international standards on violence against women.

Once a first draft was prepared in 1999, the LCWRI held a series of consultation over the next two years to build a national consensus on the draft law. The regional consultations were held in partnership with the National Alliance of Women (NAWO) and other local organizations. The regional consultative process provided a powerful opportunity to build a coalition of stakeholders on the issue. This effort was also designed to infuse the draft law with lessons learned from the experiences of women's organizations from across the country that had been providing services to survivors of violence at the grassroots level. The draft law was amended several times to include suggestions from these consultations.

The coalition alliances formed through the regional consultation process also were maintained during the campaign to lobby for this law, which lasted until 2005 when the draft law enacted as the "Protection of Women from Domestic Violence Act" (PWDVA) from the Central Government. The LCWRI spent the next year drafting the rules to give effect to this law. The PWDVA was finally brought into effect in 2006. See: Personal Communication from Asmita Basu, Jan. 31, 2010; [Domestic Violence](#), The Lawyers Collective.

CASE STUDY: On December 28, 2004, Spain adopted changes to its Organic Act 1/2004 ([English](#)) ([Spanish](#)) to incorporate protection measures against gender-based violence. Women's advocate associations had been working since 1993 to promote the passage of a law that would provide the ability for victims to obtain a restraining order against the perpetrator of domestic violence. In 1998, the Socialist Party asked the women's associations to participate in preparing a draft law against gender-based violence. The draft was submitted to the Spanish Parliament in December 2001, but rejected by the ruling party.

Despite the initial rejection of the law, women's organizations continued to look for support among international and national organizations to assist in advocating for a law against gender-based violence. In January 2002, a number of national and regional organizations formed the [Feminist Network against Gender Violence](#) to work together to pass a comprehensive law against gender-based violence. The network's approach considered all forms of violence against women, namely domestic violence, sexual assault, sexual harassment, and other forms as gender-based violence. In fact, the Preamble to the Organic Act 1/2004 states that:

Gender violence is not a problem confined to the private sphere. On the contrary, it stands as the most brutal symbol of the inequality persisting in our society. It is violence directed against women for the mere fact of being women; considered, by their aggressors, as lacking the most basic rights of freedom, respect and power of decision. See: Organic Act 1/2004, Preamble ([English](#)) ([Spanish](#)).

The network met and communicated their message to members of the government and parliamentary groups from the time the network was formed in 2002 to the law's eventual passage in 2004. The network launched a campaign for an integrated law called "[Por Una Ley Integral](#)." At the same time, debates about the constitutionality of the law described in various media sources. The debates may have helped to force the government to make the security of women, the right to equality, and the elimination of discrimination against women a priority. In the end, the efforts of the network were instrumental in raising the awareness of the public about gender-based violence, and holding the government accountable for protecting the human rights of women by advocating for the passage of laws against gender violence.

See: Developing Legislation on Violence Against Women in Spain, Response from Carmen de la Fuente Méndez, Pueblos Unidos, March 2010; [El gobierno mantiene que la ley contra la violencia ampare solo a las mujeres](#), Mujeres en Red (2004).

Mobilize the constituency

- Advocates should engage and empower the community and individuals to take action. To do so, advocates should create and communicate a clear and universal message that coalition leaders and the community can support. In addition, advocates should involve the community in decision-making whenever possible.
- Perhaps the most important aspect of mobilizing the constituency is to listen to their concerns. The position of the coalition must include the legitimate concerns without compromising the overarching goal. Advocates should work diligently to develop buy-in from the community early in the process by demonstrating an understanding of the issues and its impact on the lives of individuals.
- Finally, advocates should share information about the specific legislative or policy proposal, including the talking points and specific draft language. Advocates may want to investigate and utilize the technological tools available to help disseminate such information and to allow constituents to quickly, easily, and effectively respond to calls to action.

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 16, 2005.

PROMISING PRACTICE: In 1997 in [Slovenia and Croatia](#) a coalition of trade unions, women's groups, and universities instituted massive campaigns to raise awareness about workplace sexual harassment. The campaigns focused on changing attitudes in the workplace and educating women about their legal rights to a workplace free from sexual harassment.

CASE STUDY: In 2006, the Coordinadora Departamental de Defensorías Comunitarias del Cusco (CODECC) won an award for social innovation from the Economic Commission for Latin America and the Caribbean based on its work developing a community defenders program. This program trains women from poor and marginalized communities in the Cuzco region of Peru to help other women who have been victims of violence to come forward and report the crime. Many of the volunteers had themselves been victims of domestic violence. The volunteers support women throughout the difficult process of telling their story, filing police report and legal claims, and seeking justice in court. The organization also provides legal and psychological aid among other activities focused on defending the rights of women in Peru to be free from violence. See: [Milagros Salazar, Cuzco Women Stand Up to Violence, Nov. 4, 2009](#).

Use the media

Advocates should use the media to draw attention to the issue and raise public awareness. In doing so, advocates should provide clear factual evidence to the media in a timely manner; respond quickly to inquiries, but also carefully consider the responses; develop good relationships with reporters responsible for the issue; and use press releases, background briefings, letters to the editor, and opinion pieces using news hooks such as timely events, public policy conflicts or other hot media topics. See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 16, 2005.

CASE STUDIES:

The Inter Press Service's handbook for journalists on [Reporting Gender-based Violence](#) is a helpful resource for journalists and advocates around the world. The handbook provides issue overviews, statistical information, and most importantly sample news stories that reflect best practices for reporting on gender-based violence. The facts and statistics are in a format that can be readily adapted and transmitted to journalists in the form of a press release or a quote over the phone. The sample stories come from media outlets around the globe and can be used by advocates in planning media strategies and as examples when working with journalists during advocacy campaigns. The handbook covers religious and harmful traditional practices, domestic violence, sexual gender-based violence, femicide, sex work and trafficking, sexual harassment, gender-based violence in armed conflict and refugee women, HIV/AIDS and gender-based violence, child abuse, men's role in combating gender-based violence, criminal justice, and costs of gender-based violence.

Tanzania – In the late 1990s, the Media Women's Association in Tanzania worked on a campaign to promote the enactment of a law to criminalize FGM in that country. The program used data from public surveys, radio, television, theater, and print media to raise awareness about the issue. The campaign has since developed into a regional initiative, [Stop FGM/C](#), with partner organizations from East Africa and the Horn of Africa. See: [UN Secretary-General's In-depth Study on All Forms of Violence Against Women](#), 97 (2006).

Influencing legislators or other policy makers

- In order to achieve a legislative advocacy goal, advocates must influence legislators or members of parliament, government officials and other policy makers. Advocates should also reach out to their constituents and allies to ask them to influence policy and decision-makers. First, advocates should identify decision-makers who are sympathetic to the views and issues, and who are willing to work collaboratively. These individuals will be able to assist advocates to widen the network of supporters by recommending others to call, visit and write.

- Next, advocates should also identify and interact with officials whose views vary from the views of the supporters. These individuals will be able to voice the arguments that are likely to be raised in opposition to the advocacy goal. Even if these individuals cannot wholeheartedly support the entire effort, they may be persuaded to support a part of the effort or a single objective in the larger goal.
- Whether advocates meet, call or write to those who support or oppose the advocacy goal advocates should be respectful and always remember the importance of long-term relationships. This includes being courteous and respectful of the staff of parliamentarians, government officials and policy makers. Staff have a great deal of influence and ability to persuade policy makers.

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 18, 2005.

Methods for influencing legislators

- Individual Meetings or Briefings: A briefing is designed to present facts and analysis of proposed legislation to a group of parliamentarians and their staff whereas an individual meeting literally occurs with a single parliamentarian and possibly his/her staff.
- In planning individual meetings, advocates should:
 - Consider the most appropriate time to hold the meeting or briefing based on the schedules of the legislature and whether they are in session or not;
 - Research where individual meetings and briefings are typically held – in the legislative office building or at the offices of an NGO – and consider the most appropriate location based on the message you want to convey;
 - Determine what information will be highlighted in the meeting, the purpose of the meeting and the outcomes that are expected; and
 - Send advance information – position paper, talking points, bill summary, etc. – but keep the information to a manageable length.
- In planning briefings, advocates should:
 - Make sure to invite the other NGOs and/or government officials well in advance – at least 5 to 6 weeks – and send a “Save the Date” message with the official invitation 3 to 4 weeks in advance of the briefing.
 - Make personal invitations to the meeting or briefing as appropriate and include the legislator’s staff to attend.
 - Research the position of the legislator or policy maker in advance of the meeting and anticipate questions and concerns.
 - Develop and practice a concise and understandable three minute message.
 - If more than one individual attends the meeting, meet in advance of the meeting to determine the roles each person will play (substantive expert, person providing testimonial, constituent) and at the meeting, introduce each person and their role.
 - If multiple individuals or NGOs participate in the meeting or briefing, make sure to settle internal disputes privately in advance.

- Make arrangements for the meeting or briefing, including arranging for an appropriate meeting space, reserving audio-visual equipment, requesting needed seating, tables, podiums and flipcharts or other inputs as appropriate.
- Listen to the legislator or policy maker and address concerns and questions
- If you do not have information requested, send any information you offered to send later.
- Follow-up on the meeting with a letter of thanks.
- Keep in touch with supportive individuals.
- Letters and Telephone Calls: These methods can also be effective tools for influencing legislators and policy makers. Advocates should keep the following suggestions in mind.
- Letters should:
 - Clearly state the issue and objective;
 - Explain why the legislator or policy maker should support the position;
 - Acknowledge the individual's ability to influence the issue;
 - Tell the legislator or policy maker how to support the position and how they will benefit from doing so;
 - Address potential concerns;
 - Be concise;
 - Use the individual's correct title; and
 - Be respectful.
- In telephone calls, advocates should:
 - Outline the issues that will be covered and place the priorities at the top of the list;
 - Capture the legislator's or policy maker's attention within the first 30 seconds;
 - Be polite;
 - Summarize any outcome of the conversation in a letter; and
 - Thank the individuals for their time.
- In addition to individual meetings, letters, and telephone calls; advocates will likely have the opportunity to engage in more public discussion about the issues. Advocates must carefully prepare for such opportunities as much or more than for the private meetings and calls. The public debate may take the form of a legislative hearing or perhaps a less formal discussion or forum.
- Public Hearings: Public hearings are a more formal way of working with the legislature or parliament. The advantage of public hearings is that it is a way for advocates to have a substantive discussion with those who have power and jurisdiction to address the issue at hand at the parliament and during the parliamentary session. The disadvantage of the public hearing is that typically, public hearings are subject to parliamentary procedure, which may limit or otherwise encumber advocates who wish to participate.

- **Public Discussion:** Another way to engage public debate is through a public discussion, which is more informal than a public hearing, but still subject to the rules of procedure. Advocates may benefit from a public discussion of the issue at hand because more people have the opportunity to participate when a discussion is held outside the parliament. The disadvantage of the public discussion is that while civil society experts on the issue may be present, not all members of parliament or the desired policy makers will participate.
- **Public Forum:** A final way to engage in public debate is by organizing a public forum. The public forum is organized by the NGO leading the advocacy effort. The NGO may invite those it wants to participate, hold the forum in a neutral location, and select those it wishes to make presentations to those attending. The disadvantage is that members of parliament need not participate and if they do, the impact on policy may be minimal because the forum is held outside of the official dialogue.
- Despite the disadvantages of each type of public debate, advocates should explore these options and consider which one might be most useful to the effort.

See: [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#), Global Rights, 38, 2005.

PROMISING PRACTICE: The National Coalition Against Domestic Violence in the United States has published a handbook on taking legislative action to protect women from domestic violence. The [Domestic Violence Legislative Action Guide](#) contains suggestions on how to understand the legislative process, how to track legislation, how to organize meetings and build coalitions as well as sample scripts for writing letters to legislators or contacting them by telephone.

CASE STUDY: Gender is My Agenda Campaign

One common mechanism used for advocacy, especially at regional bodies, is the NGO pre-forum or sideline meeting. This technique is effectively used in many areas to develop NGO consensus and prepare for lobbying efforts prior to the convening of a policy- or law-making body or a human rights mechanism. This technique has been used, for example, in the African context by civil society groups undertaking advocacy at the African Union. The NGO [Femmes Africa Solidarité](#) coordinates regular Pre-Summit Consultative meetings before each session of the African Union. These meetings focus on increasing involvement of African women in AU processes and on monitoring and implementation of the AU's Solemn Declaration on Gender Equity in Africa as well as other regional women's rights instruments, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

After the campaign: now what?

While advocacy is achieved step-by-step, persistent, and long-term commitment to the advocacy goal, success should be celebrated along the way with supporters. Advocates should actively disseminate information about the change in law or policy to the public.

At the same time, advocates should reassess the initial strategy to decide next steps, evaluate the efforts, monitor the implementation of the new legislation or policy, and document the results of the monitoring to identify issues that still need to be address or outcomes not anticipated.

PROMISING PRACTICE: Evaluating advocacy efforts is a critical and often overlooked aspect of advocacy. Evaluation information should feed back into the advocacy process so as to provide renewed and more effective future efforts. Evaluation also helps a group determine whether the advocacy effort has achieved the desired results. Evaluation information can be gathered throughout the advocacy effort as well as at the end of the process. Evaluation experts identify the following as the most common methods for gathering information about the effectiveness of advocacy efforts: surveys, case studies, focus groups, media tracking, media content analysis, participant observation, policy tracking and public polling. However, advocates may wish to try these alternative methods to gather unique data suited to their evaluation needs: Bellwether interviews assess the opinion of highly influential policy-makers about the advocacy topic; developing rating scale for policy makers to quantify how supportive they have been of the advocacy issue; intense period debriefs during which evaluators document the experiences and ideas of advocates after especially intense work-periods; system mapping to develop a visual picture of how a system needs to change. (See: Coffman, Julia and Reed, Ehren, [Unique Methods in Advocacy Evaluation](#))

Resources

- [ABA Rule of Law Initiative Home, Judicial Reform Programs.](#)
- Action Group to End Human Trafficking and Modern Day Slavery, *Recommendations for Fighting Human Trafficking in the United States and Abroad Transition Report for the Next Presidential Administration*. Available in [English](#)
- Amnesty International, *Making Rights a Reality: Campaigning to Stop Violence Against Women*. Available in [English](#).
- Asia Pacific Forum on Women, Law and Development, [Claiming Rights, Claiming Justice: A Guidebook on Women Human Rights Defenders](#). Available in [English](#)
- Coffman, Julia and Reed, Ehren, [Unique Methods in Advocacy Evaluation](#). [http://www.calendow.org/uploadedFiles/Evaluation/Coffman%20Reed%20Unique%20Methods%20\(paper\).pdf](http://www.calendow.org/uploadedFiles/Evaluation/Coffman%20Reed%20Unique%20Methods%20(paper).pdf)
- Department for Constitutional Affairs, [Confidence and Confidentiality: Improving Transparency and Privacy in Family Courts](#). <http://www.dca.gov.uk/consult/courttransparency1106/response-cp1106.pdf>
- ECPAT International, [Strengthening Laws Addressing Child Sexual Exploitation: A Practical Guide](#). http://ecpat.net/EI/Publications/Legal_Reform/Strengthening_Law.pdf
- Equitas: International Centre for Human Rights Education, [International Human Rights Training Program Resource Manual](#). http://www.equitas.org/english/ed-manuals/pdf/IHRTP_Resource_Manual.pdf
- Global Justice Center, [Legal Tools for the Establishment of Gender Equality through International Law](#). http://www.worldpulse.com/files/upload/2411/legal_tools.pdf
- Global Rights, [Combating Human Trafficking in the Americas: A Guide to International Advocacy](#). http://www.globalrights.org/site/DocServer/Combating_Human_Trafficking_in_the_Americas.pdf?docID=9143
- Global Rights, [Making Human Rights Real: A Human Rights Education Program for Women in Morocco](#). http://www.globalrights.org/site/DocServer/English_Summary_-_Revised_HRE_for_Women_Facilitators_Man.pdf?docID=2846

- Global Rights, [Legislative Advocacy Resource Guide: Promoting Human Rights in Bosnia and Herzegovina](#)
- Global Rights, [Promoting Women's Human Rights: A Resource Guide for Litigating International Law in Domestic Courts](#).
http://www.globalrights.org/site/DocServer/PWR_ResourceGuideFIN_eVersion.pdf?docID=5063
- House of Lords Select Committee on the Constitution, [Parliament and the Legislative Process](#).
<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/17302.htm>
- Inter Press Service Africa, [Reporting Gender Based Violence: A Handbook for Journalists](#). http://www.ips.org/mdg3/GBV_Africa_LOWRES.pdf
- National Alliance to End Sexual Violence, [Sexual Assault Advocacy Guide](#).
<http://www.naesv.org/Resources/AdvocacyManual030708.pdf>
- National Coalition Against Domestic Violence, [Domestic Violence Legislative Action Guide](#). <http://www.ncadv.org/files/HowtoLobbyManualFinal2006.pdf>
- O'Connor, Monica and Healy, Grainne, [The Links between Prostitution and Sex Trafficking Handbook](#).
http://action.web.ca/home/catw/readingroom.shtml?x=89931&AA_EX_Session=3f34649cc97ff22c54a615604f0cb5ab
- Open Society Initiative for Southern Africa, [Making the grade: A model national policy for the prevention, management and elimination of violence against girls in school](#). http://www.actionaid.org/assets/pdf/Model_policy_educ.pdf
- Secretariat of the Committee on Equal Opportunities for Women and Men, Parliamentary Assembly of the Council of Europe, [Handbook for Parliamentarians: Parliaments United in Combating Domestic Violence against Women](#).<http://www.coe.int/t/pace/campaign/stopviolence/Source/ID%204170%20Manuel%20Parlementaires%20A5%20Gb.pdf>
- [UN Secretary-General's In-depth Study on All Forms of Violence Against Women](#). http://www.unifem.org/news_events/story_detail.php?StoryID=514
- Washington Office on Latin America, [Manual for Facilitators of Advocacy Training Sessions](#). Available in [English](#).
- Women's Institute for Leadership Development, Making Rights Real.

Implementation of Laws on Violence Against Women and Girls

Throughout this knowledge asset, reference to certain provisions or sections of a piece of legislation, part of a legal judgment, or aspect of a practice does not imply that the legislation, judgment, or practice is considered in its entirety to be a good example or a promising practice. Some of the laws cited herein may contain provisions which authorize the death penalty. In light of United Nations General Assembly resolutions [62/149](#) and [63/168](#) calling for a moratorium on and ultimate abolition of capital punishment, the death penalty should not be included in sentencing provisions for crimes of violence against women and girls.

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Introduction

Enacting legislation to address violence against women is a first step in combating violence against women. However, in order to end violence against women, it is also critical to mandate implementation of these laws, and to develop strategies to facilitate implementation. Those mandated to implement legislation regarding violence against women, including police, prosecutors, judges, helping professions, and community leaders, must have an in-depth understanding of such legislation and must be able to implement it in an appropriate and gender-sensitive manner. In addition, it is important for society as a whole to be aware and educated about violence against women. Laws and strategies should outline the responsibilities of individuals and organizations from both the public and private sectors on a local, national, and global level. The ideal model for ending violence against women is a community that comes together across sectors, agencies, and civil society groups to develop a commitment to support victims and hold perpetrators accountable. Reflecting this commitment in action plans, campaigns, inter-agency agreements, local and regional plans, etc., is the best way to ensure that laws on violence against women are effectively implemented. This joint planning and communication is referred to as a “coordinated community response.”

Components of implementation of laws on violence against women

The following are critical components that must be addressed in law to ensure effective implementation:

- National or local action plan including an interagency approach or coordinated community response
- Budget
- Training and capacity building for public officials
- Specialized police and prosecutorial units
- Specialized courts or other dispute resolution mechanisms
- Protocols, guidelines, standards and regulations
- Time limit on activating legislative provisions
- Penalties for non-compliance by relevant authorities

See: [UN Handbook for Legislation on Violence Against Women](#), sec. 3.2.

Each of these components is dealt with in various sections below, but several examples of laws from around the world are provided here for quick reference.

- *National or local action plan including a coordinated community response*
In its preamble, Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) specifies that "Gender violence is approached from an integrated, multidisciplinary standpoint, starting from the processes of education and socialization." In its statement of purpose, the act states that it "establishes integrated protection measures whose goal is to prevent, punish and eradicate this violence and lend assistance to its victims."
- *Budget*
The United States' [Violence Against Women Act](#) and its subsequent reauthorizations create dedicated funding streams for NGO programs to address violence against women in communities around the country, including among special populations such as rural communities and indigenous communities. See: Sec. 101, Stop Grant Improvements.
- *Training and capacity building*
Albania's [Law on Measures against Violence in Family Relations](#) requires that appropriate ministries create dedicated training programs for key service providers such as police and social service employees. See: Art. 6.
- *Specialized police and prosecutorial units*
Myanmar's [Anti-Trafficking in Persons Law](#) requires the creation of a "specially trained force for the prevention of trafficking in persons" and "speedy and effective investigation and exposure." See: Art. 8(e).
- *Specialized courts or tribunals*
The Caribbean Community [Model Legislation on Sexual Harassment](#) establishes a specialized tribunal to deal with cases of sexual harassment in the workplace, education, housing, and provision of goods and services.

- *Protocols, guidelines, standards and regulations*
Kenya's [Sexual Offences Act](#) provides for the promulgation of regulations to implement the legislation relative to sexual assault, rape, and sexual harassment.
- *Time limit on activating legislative provisions*
The Philippines' [Republic Act 9262](#) states in section 46 that: *Within six (6) months from the approval of this Act, the DOJ, the NCRFW, the DSWD, the DILG, the DOH, and the PNP, and three (3) representatives from NGOs to be identified by the NCRFW, shall promulgate the Implementing Rules and Regulations (IRR) of this act.*
- *Penalties for non-compliance by relevant authorities*
Costa Rica's [Criminalization of Violence against Women Law](#) (2007) states that public officials who deal with violence against women "must act swiftly and effectively, while respecting procedures and the human rights of women affected" or risk being charged with the crime of dereliction of duty. See: Art. 5.

Interagency approach / coordinated community response

Effectively implementing laws on violence against women requires community support. Drafters should include an interagency, coordinated community approach when mandating the implementation of laws addressing violence against women.

What is a [Coordinated Community Response](#)?

The implementation of new laws and policies is most effective when paired with the development of a community-wide strategy that ensures all members of the community respond in a consistent way to violence against women and can be held accountable for their responses. Coordinated community response (CCR) programs engage the entire community in efforts to develop a common understanding of violence against women and to change social norms and attitudes that contribute to violence against women. Law enforcement, civil society, health care providers, child protection services, educators, local businesses, the media, employers, and faith leaders should be involved in a coordinated community response. See: [Coordinated Community Response](#), StopVAW, The Advocates for Human Rights.

Coordinated community response (CCR) programs should:

- Promote victim safety;
- Hold perpetrators accountable;
- Strengthen individual knowledge and skills;
- Promote community education;
- Educate service providers and the legal system;
- Foster coalitions and networks;
- Change organizational practices; and
- Develop law and policy.

See: [Sexual Violence and the Spectrum of Prevention](#), National Sexual Violence Resource Center (2006).

Coordinated community response programs work to create a network of support for victims and their families that is both available and accessible. They also use the full extent of the community's legal system to protect victims, hold perpetrators accountable, and reinforce the community's intolerance of violence against women.

CASE STUDY – Romania

Romania passed domestic violence legislation in 2003 and a coordinated community response in one region has changed the way that a community deals with domestic violence. In Mures district, local NGOs that run a crisis center coordinate with local police and emergency medical units to support victims and hold perpetrators accountable. The coordinated community response program was supported by UNFPA, through the creation of local multidisciplinary coordinating teams. In Mures district, local NGOs approached the police to engage them in improving the response to domestic violence cases. The district had begun using an integrated information system for reporting, screening, and referring cases of domestic violence. Building on that initial integration, NGO workers, health providers, and police began a dialogue about how to encourage women to file complaints. Women had traditionally had little trust in the police and the police had been reluctant to get involved. After a year of working collaboratively with the police, more cases began to be referred to the crisis center. In addition, police began working very closely with the NGOs – regularly taking the initiative to check up on cases, attending awareness-raising vigils, accompanying crisis center staff on home visits to former clients, and even stopping by the homes of former victims on their own to check in. In addition, a building has been refurbished to act as an alternative location for victims to file complaints with the police – many didn't want to go to the police station because it was very public and very crowded. Partners in the effort credit the local coordinating committee, the police involvement, and the initiative of local NGO workers with the program's success. See: UNFPA, [Programming to Address Violence Against Women: 10 Case Studies](#), 11-20 (2007).

Inter-agency coordination is a critical component of a CCR response. A single case of domestic violence, for example, may involve multiple laws and regulations, various levels of government, and numerous intervening agencies and groups. In the course of a day, that single case may be in the hands of multiple practitioners throughout the civil and criminal justice systems as well as service agencies. Coordination of responses and accountability of those practitioners can significantly increase the effective implementation of new laws created to protect victims, prosecute offenders, and prevent further violence. Interagency coordination involves:

- Creating a common vision and action plan;
- Ensuring communication, linkages, and accountability among agencies;
- Providing clear, written mandates to each responsible agency; and
- Establishing an entity to monitor implementation of the coordinated action.

See: [Domestic Violence: Legislation and its Implementation](#), 40-45, UNIFEM (2009).

CASE STUDY – Coordinated Community Response in Minnesota, USA

The US state of Minnesota has been a leader in the development of coordinated community response programs related to domestic violence. One of the first programs was in Duluth, Minnesota, a mid-sized metropolitan area with a population of approximately 250,000. In the early 1980s, eleven local agencies came together to begin planning a multidisciplinary approach to protecting women from domestic violence. These agencies included 911, police, sheriff's and prosecutors' offices, probation, the criminal and civil courts, the local women's shelter, three mental health agencies, and a newly created coordinating organization called the [Domestic Abuse Intervention Program](#) (DAIP). [The Duluth Model](#) of coordinated community response (CCR) is recognized internationally as a leading tool to help communities eliminate violence in the lives of women and children. The model focuses on stopping domestic violence through written procedures, policies, and protocols governing intervention and prosecution of criminal domestic assault cases. Four primary principles guide the model:

- Changing basic infrastructure of the multiple agencies involved in domestic violence case processing;
- The overall strategy must be victim-safety centered;
- All collaborating agencies agree to identify, analyze, and find solutions to any ways in which their practices might compromise the collective intervention goals; and
- Consistently holding abusers accountable for their use of violence.

Twenty years later, the city of Saint Paul, Minnesota in coordination with Praxis International developed a cutting edge domestic violence CCR program to coordinate the work of critical agencies. Saint Paul's judicial district, court administration, police, prosecutors' offices, correctional system, emergency response agency, sheriff's office, and local advocates came together to create a "blueprint" (a highly detailed, foundational document) for how to build an effective criminal justice response to domestic violence. The resulting [Blueprint for Safety](#) includes specific guidance for every agency, including what victims need to be safe, what workers need from each other to do their jobs, and what is required by each worker and agency to hold an offender accountable. The Blueprint lays out key foundations for its coordinated response:

- Adhere to an interagency approach and collective intervention goals.
- Incorporate agency-to-agency accountability.
- Build attention to the context and severity of abuse into each intervention.
- Recognize that most domestic violence is a patterned crime requiring continuing engagement with victims and offenders.
- Ensure sure and swift consequences for continued abuse.
- Use the power of the criminal justice system to send messages of help and accountability.
- Act in ways that reduce unintended consequences and the disparity of impact on victims and offenders.

See: Praxis International, [Blueprint for Safety](#).

A coordinated community response should be written into legislation and national action plans. For example, Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) reflects a coordinated, interagency approach throughout the law. Article 32 states:

The public authorities will draw up collaboration plans which ensure the organised rollout of initiatives for the prevention and prosecution of gender violence and the care of its victims, which should involve the health authorities, the judicial authorities, national law enforcement and security agencies, social services departments and equality organisations.

Protocols will be drawn up in implementation of these plans whose procedures will ensure a global, integrated effort by the various authorities and services involved, and secure the evidence stage during the proceedings under way.

Article 19 states:

1. The female victims of gender violence are entitled to receive care, crisis, support and refuge, and integrated recovery services. The organisation of such services by the Autonomous Communities and local authorities shall reflect the principles of 24-hour attention, urgent action, specialised care and professional multidisciplinary.

2. Multidisciplinary care shall in all cases involve:

- a) Information to victims*
- b) Psychological assistance*
- c) Social assistance*
- d) Monitoring of women's rights claims*
- e) Educational support to the family unit*
- f) Preventive training in the values of equality conducive to their personal development and their skilling in non-violent conflict solving.*
- g) Support to employment training and insertion.*

3. Services shall be organised to ensure the effectiveness of their delivery by means of staff specialisation and one-stop capabilities.

4. Such services will act in coordination with each other and in collaboration with the Police, Violence against Women Judges, the health services and the institutions responsible for providing victims with legal counsel, in the corresponding geographical zone. They may also apply to the Judge for any emergency measures they deem necessary.

Goals and principles for a coordinated community response (CCR)

Coordinated community response (CCR) programs may focus on a single type of violence or on gender-based violence generally. Whatever the level of coordination or the focus, the primary goal should always be increased victim safety and support. Coordinating responses without focusing on victim safety can, in fact, be harmful to victims. Other goals for CCR programs might include:

- Short term
 - Increase knowledge about laws that protect women and girls

- Support and empower women and girls
- Ensure sanctions for perpetrators
- Long term
 - Change harmful attitudes and beliefs about violence against women
 - Reduce prevalence and ultimately end violence
- Goals should include a timeframe for accomplishing objectives. For example, the [Southern African Development Community Protocol on Gender and Development](#) requires that states “adopt integrated approaches, including institutional cross sector structures, with the aim of reducing gender based violence by half by 2015.” See: Article 25. The protocol applies to Angola, Democratic Republic of Congo, Lesotho, Madagascar, Mauritania, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The [Coordinated Community Response Council](#) in Santa Fe, USA has set its goal to make Santa Fe the safest city in the United States by 2012. CCRC-Santa Fe focuses on domestic violence, sexual assault, and stalking.

The goals of a coordinated community response program should be reflected in principles of intervention and action. Key principles for any CCR effort should include:

- Respond to the expressed needs of victims: Intervention practices must respond to the articulated needs of victims, whose lives are most impacted by the interveners’ actions.
- Focus on changing the perpetrator and the system: The institution, not the victim, must hold the offender accountable from initial response through restrictions on offender behavior. Focus on changing the offender’s behavior or the system’s response.
- Recognize differential impacts on different people: All intervention policy/practice development must recognize how the impact of intervention differs, depending on the economic, cultural, ethnic, immigration, sexual orientation, and other circumstances of the victim and offender. Non-majority-culture community members must review and monitor the practice.
- Address the context of violence: Most incidents of violence are part of a larger pattern of violence. The need for protection from further harm and the need to create a deterrent for the assailant should determine the intensity of the intervention.
- Avoid responses that further endanger victims: Intervention practices should balance the need for standardized institutional responses with the need for individualized responses which recognize potential victim consequences for confronting the offender, validate victim input, and support victim autonomy.
- Link with others: The intervention response must be built on cooperative relationships with other community members and on communication and interdependent procedures to ensure consistency across sectors.
- Involve victims/survivors in monitoring changes: Women advocates and victims, outside the system, should continually monitor intervention policies/procedures to evaluate their effectiveness in protecting victims and to identify training needs.

See: [Battered Women’s Justice Project](#) Principles of Intervention, in [Coordinated Community Response](#), StopVAW, The Advocates for Human Rights.

CASE STUDY – UK

The United Kingdom has created [Together We Can End Violence against Women and Girls: A Strategy](#), a series of proposals to create a comprehensive approach to combating violence against women through cooperation of the criminal justice system, public sector agencies, and non-profit organizations. The strategy focuses on protection through an effective criminal justice system, provision of services to victims of violence against women, and prevention of violence through awareness-raising campaigns, educational programming, and intervention training. These proposals were based on written responses collected from victims of violence, meetings with frontline experts from around England and Wales, and a number of reviews conducted by government agencies. The reviews address the National Health Service's response to violence against women and girls, as well as the criminal justice system's response to rape complaints. Progress toward the program's goals will be overseen by an inter-departmental board managed by the Home Office, and streamlined for implementation by directors at the local level. An independent review of the strategy will be conducted annually.

Benefits of coordinated community response

The benefits of coordination are many, but the primary benefit should be increased victim safety. Other benefits may include:

- More effective use of limited financial resources;
- Coherent, integrated, long-term policy directions;
- Better knowledge transfer across sectors;
- Linked trainings to enhance inter-disciplinary coordination; and
- Mainstreaming neglected and under-resourced issues into the community response.

See: [What a Waste: The Case for an Integrated Violence Against Women Strategy](#), Ch. 9, Women's National Commission.

CASE STUDY – Hennepin County, USA

In the US state of Minnesota, the county that is home to the state's largest city made a decision to create a one-stop center where women could access a variety of critical services in one location. The [Domestic Abuse Service Center](#) (DASC) is designed to specifically implement the provisions of the state's domestic abuse legislation. Under [Minnesota Statute Ch. 518B](#), victims of domestic violence may ask for an Order for Protection from the Family Court. A victim is not required to report the violence to the police before asking for an Order for Protection and there is no fee to file the request. At the DASC woman can get help from staff who will educate them about their rights, help them fill out forms, and assist them with filing their request for a protective order. In the same location, women can also meet with a prosecutor, with a probation officer, and with trained staff who can assist them with information about eligibility for support, including cash, health care, food support and other emergency assistance. Staff at DASC can also refer women to local NGOs who can provide them with more tailored support.

Creating a coordinated community response program

There are several types of coordinated community response to violence against women:

- Community partnering – less formal, grassroots model where a collaborative oversight body helps to coordinate activities;
- Community intervention – focused on training and capacity building for organizations working to serve women, hold offenders accountable, and prevent violence;
- Community organizing – focused on raising awareness and encouraging action community-wide; and
- InterAgency Approach – focused on ensuring coordination between parts of the justice system and other service providers, operating off of a common plan of action.

See: [Domestic Violence: Legislation and its Implementation](#), 40-45, UNIFEM (2009).

The [Minnesota Center Against Violence and Abuse](#) presents additional information about the set-up and functioning of an array of programs across the US. Regardless of the format, members in coordinated community response programs should develop:

- a shared philosophical framework on violence against women;
- an understanding of each others' roles; and
- a plan to improve the response of different institutions and agencies to violence against women.

This often involves developing agreements across agencies, working out protocols of coordinated action, and creating legal Memoranda of Understanding to clearly define roles and expectations. In order to maintain an effective coordinated response, ongoing communication is critical, including keeping all partners apprised of developments, maintaining regular meetings, and planning for turnover and membership changes within the network or coalition so that valuable knowledge is not lost. Extensive

information on building a coordinated community response program is available from the [National Center for Domestic and Sexual Violence](#). See: [Assessing the Justice System Response to Violence Against Women: A Tool for Communities to Develop Coordinated Responses](#), Minnesota Center Against Violence and Abuse; [Minimum Standards for Creating a Coordinated Community Response to Violence Against Women on Campus](#), U.S. Dep't of Justice.

Assessing systems

Mapping the experiences of women who have been victims of violence is a key piece of developing a coordinated response. Documenting the experiences of women when they ask for help from police or others, try to access services, get legal help, find physical and mental health care, etc., is the first step in identifying partners that should be included in a coordinated community response network and will help prioritize gaps in implementation. [See the [Monitoring Section](#) of this Module] Mapping the experience of advocates trying to help women escape from and recover from violence can also provide important insights. Mapping is often undertaken in the form of case studies of individual women, or consolidated needs assessment reports. The report [What a Waste: The Case for an Integrated Violence Against Women Strategy](#), produced by the Women's National Commission, presents examples of individual case studies from the UK that were used in the process of mapping for an integrated response. The Advocates for Human Rights' report on implementation of laws against [Domestic Violence in Bulgaria](#) is an example of how court records and human rights fact-finding interviews can be used to map implementation.

PROMISING PRACTICE: Safety Audits to Track Systems Response

[Safety Auditing](#) is a tool developed by US-based [Praxis International](#) in the domestic violence context to help determine whether women's safety is actually being promoted by the policies and procedures designed for that purpose. A safety audit is conducted by a multidisciplinary team drawn from the institutions/systems being audited that examines whether work routines and ways of doing business strengthen or impede safety for victims. The audit team reviews all aspects of an interagency response to violence and looks for gaps that may create safety risks for victims. The Audit is focused on understanding how 1) a victim becomes a legal 'case'; 2) responses to that case are organized and coordinated within and across intervening agencies; and 3) complexity of risk and safety varies for each individual victim. The audit team conducts interviews, observational research, and reviews the paper trail created as systems respond to victims. Analysis then focuses on how risks for women result from the systems that are in place and how those risks can be eliminated. This process provides critical feedback into the community response to cases of violence against women. [The Praxis Safety and Accountability Audit Guide](#) provides extensive information about the Audit method and its process of gathering and analyzing data. The Guide's templates, illustrations and worksheets outline the Safety Audit's philosophical underpinnings, clarify the data collection steps and methodologies, and provide a knowledge base for the team's work. [End case study]

Identifying partners

Partners in a CCR program can come from all relevant sectors, both public and private. Although each community is different, key sectors to consider include:

- Advocacy organizations
- Educators
- Employers and unions
- Faith groups and traditional leaders
- Government departments or ministries
- Health care providers
- Law enforcement
- Legal system – judges, prosecutors, court staff, etc.
- Media
- Men’s groups
- Parents
- Social service providers
- Victims/survivors
- Youth groups

In a pilot project for a domestic violence community response program in Queensland, Australia, for example, partners included the Brisbane City Council, Department of Families, Department of Justice and Attorney General, Department of Corrective Services, Police Service, Office of Women’s Policy, Family Court of Australia, Domestic Violence Resource Centre, Combined Women’s Refuge Group, Women’s Legal Service, Lord Mayors Women’s Liaison Group, and the Immigrant Women’s Support Service. See: [Coordinated Community Response to Domestic Violence \(CCR\) Wynnum Pilot Project](#). In Eritrea, a national coordinating task force on FGM included representatives from the Ministry of Health, National Union of Eritrean Women, National Union of Eritrean Youth and Students, Ministry of information, and local heads of government social service. See: [Campaign Against Female Genital Mutilation](#), UN Secretary-General’s database on violence against women.

CASE STUDY – Andhra Pradesh, India

In India, the Protection of Women from Domestic Violence Act requires each state to institute a protection officer system to assist victims of domestic violence. Implementation of this provision has been particularly effective in the state of Andhra Pradesh, based on a strong inter-agency coordination program initiated by the police. The police, legal aid groups, protection officers, and other civil society service providers have developed clear guidelines and agreements for interagency coordination. Accordingly, when a case of domestic violence is reported to the police, the woman generally is referred to a protection officer who then gives appropriate referrals to service agencies. Legal aid lawyers provide free legal services for victims who need that assistance. A related factor in the success of the Andhra Pradesh system is that the state government allocates more funds than any other Indian state to implementation of the domestic violence law. See: Press Release, Centre for Social Research (2009); [Domestic Violence: Legislation and its Implementation](#), 44-45, UNIFEM (2009).

National action plans

Laws on violence against women should include a provision that requires creation of a national action plan to eliminate violence against women. A national action plan can be an extremely useful tool with which to assess strengths and weaknesses, set targets, identify private organizations that can help implement new laws or priorities, and plot future directions in ensuring prevention of violence against women. Action plans and strategies should also include provisions to meet funding needs of implementation programs. (See also Module on Policy and Budgeting Cycles- *forthcoming*)

Requiring national action plans in legislation

- Drafters including national actions plan provisions should specify that the resulting action plan must:
 - Be evidence-based
 - Result from extensive consultation with relevant groups and individuals
 - Include benchmarks and sanctions for non-compliance
 - Clearly identify costs and funding sources for each component of the plan

- Legislation from around the world provides helpful examples of the ways that drafters have required the development of national action plans.

- Kenya's [Sexual Offences Act](#) requires that the designated minister shall:

(a) prepare a national policy framework to guide the implementation and administration of this Act in order to secure acceptable and uniform treatment of all sexual related offences including treatment and care of victims of sexual offences;

(b) review the policy framework at least once every five years; and

(c) when required, amend the policy framework.

See: Art. 46.

- In compliance with the law, the Attorney General in Kenya appointed a multisectoral task force to develop the National Action Plan. See: Anne Kithaka, [Enforcement of the Sexual Offences Act in Kenya](#) (2008).
- Mexico's [Law on Access of Women to a Life Free of Violence](#) prioritizes the inclusion of measures and policies to address violence against women in the National Development Plan and obliges the Government to formulate and implement a national policy to prevent, address, sanction and eradicate violence against women.
- Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) is one of the most comprehensive laws on violence against women and has several specific provisions that require national action plans. For example in article 3 the law states that:

With immediate effect from the entry of this Act, and the corresponding budgetary allocation, the Government shall launch a National Sensitisation and Prevention Plan regarding Violence against Women which should at least:

Present to society of new scales of values based on respect for basic rights and liberties and the equality of men and women, and on the exercise of tolerance and freedom as part of the democratic principles of coexistence, viewed within the context of gender relations.

Target both men and women from a platform of intercultural, community-based work.

Envisage a comprehensive supplementary training and recycling programme for the professionals dealing with situations of gender violence.

Be overseen by a broad-based Commission, to be created within one month at most, whose members shall include victims, institutions, professionals and people of acknowledged repute for their work on this issue.

- Uruguay's [Law 17.514](#) also mandates the design of a national plan against domestic violence.
- Certain regional agreements also require that states develop national action plans on violence against women. The [Southern African Development Community Protocol on Gender and Development](#), which addresses gender-based violence and sexual harassment, requires that states “ensure that national action plans, with measurable time frames, are put in place, and that national and regional monitoring and evaluation mechanisms are developed and implemented.” The Protocol further requires collection and analysis of baseline data against which to monitor progress, and also notes that disputes about state implementation of the protocol may be referred to the Southern African Development Community Tribunal.

Developing a national action plan

The development of a national action plan as required by law likely will include some or all of the following stages:

- Capacity building and preparation
- Evidence gathering
- Consultation, consensus-building, and strategic planning
- Building ownership
- Transfer to the local level

See: UNFPA, [Programming to Address Violence Against Women: 8 Case Studies vol. 2](#).

Preparation

In some nations, an initial stage of capacity building and preparatory education may be needed before a national action plan on violence against women can be considered. In particular, in post-conflict nations where civil society has been weakened or in nations where there is little recognition of gender-based violence as a problem at all, significant preparation may be needed to lay the groundwork for a national action plan.

CASE STUDY – Algeria

When Algeria emerged from a decade of conflict in the 1990s, women had been targets of multiple forms of gender-based violence. UNFPA worked with women's groups who had been leaders in the movement for democratic reform and for women's rights to begin laying the groundwork for coordination between the government and civil society to work together to address the issue of violence against women. The process began with a stakeholder assessment as well as the identification of preliminary objectives for a gender initiative. A key aspect of this work was strengthening the capacity of civil society groups to work with and monitor the government. For a decade, UNFPA continued to work with government and civil society partners to produce a situational analysis of needs related to gender-based violence and to conduct prevalence and public opinion surveys. The media gave wide coverage to the survey results which helped provide a foundation for consultations with stakeholders on a national plan. Key ministries, such as Health and Population, Family and the Status of Women, Foreign Affairs, Justice, Education, Religious Affairs, and Interior, were actively engaged and three regional consultations were held with more than 80 civil society organizations participating. This process led to the creation of a National Commission to Combat Violence Against Women, which was charged with development of the final national plan of action. Through extensive consultation and review of evidence, the National Commission produced the National Strategy to Combat Violence against Women throughout the Life Cycle, which was adopted in 2007. See: UNFPA, [Programming to Address Violence Against Women: 8 Case Studies vol. 2](#), 9-15.

Evidence gathering

Basing the national action plan on valid, reliable evidence is a critical step. Data on prevalence, information about cost to society, as well as specific mapping of institutional structures that impact violence against women, provide important baseline information against which to measure the progress under a national plan.

CASE STUDY – Australia

In 2008, Australia established a national council to provide advice to the government on the creation of a national plan of action. The council began its work by conducting extensive research on violence against women in Australia, including drawing information from the Australian Bureau of Statistics, the [International Violence Against Women Survey](#), the Department of Families, Housing and Community Services, Australian Institute of Health and Welfare, the Australian Institute of Criminology, and other entities. The council also consulted with more than 2000 Australians to gather data and input. Results of this data gathering indicated that 350,000 women in Australia experience physical violence and 125,000 experience sexual violence each year. The council documented the cost to the nation at \$13.6 billion. The council ultimately proposed a National Plan to Reduce Violence Against Women including six key outcome areas along with 20 high-priority actions requiring urgent response from the government. See: [The National Plan to Reduce Violence Against Women: Immediate Government Actions \(2009\)](#).

Consultation and consensus-building

Broad consultation regarding the development of a national action plan is perhaps the most important phase of development, as it provides an opportunity to educate key stakeholder groups, to build-consensus on a way forward, and to create networks of support both locally and internationally.

CASE STUDY – Ireland’s National Plan to Combat Trafficking

In 2007, Ireland passed national anti-trafficking legislation. In relation to the new law, a High Level Group was established to develop a national action plan on trafficking. The High Level Group, which reported to Minister of Justice, was co-chaired by the Director General of the Irish National Immigration Service and an Assistant Secretary in the Department of Justice, Equality and Law Reform. The national plan was focused on four areas: Prevention of Trafficking and Awareness Raising, Prosecution of the Trafficker, Protection of the Victim, and Response to Child Trafficking. The consultation process in Ireland involved media announcements seeking comment from any interested parties. Among approximately 30 groups that submitted comments and recommendations were the Immigrant Council of Ireland and the Migrant Rights Centre of Ireland. These and other groups were instrumental in reminding the government that trafficking is part of a broad spectrum of violence against women and in referencing international instruments relative to trafficking for consideration in the plan. The consultative process in Ireland resulted in the development of the [National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012](#). See: [Submission to the National Action Plan to Prevent and Combat Human Trafficking](#), Immigrant Council of Ireland (2007); [Submission to the Proposed National Action Plan to Prevent and Combat Human Trafficking](#) (Migrant Rights Centre Ireland 2007); [Press Release](#), Department of Justice (Oct. 11, 2007).

Building ownership

Closely related to consultation is building ownership of the plan amongst key stakeholders. Individuals are much more likely to implement and advocate for a plan that they feel belongs to them. Encouraging consultation on the design of the plan is key, as described above, but building ownership can be a different process that involves political savvy to bring key players on board. (See also [Advocacy section](#))

CASE STUDY – Morocco

In Morocco, increasing gender equity has been a hotly contested issue. Earlier introduction of a National Plan of Action for Integrating Women in Development had been very polarizing. When time came for the development of a national strategy to combat violence against women, lessons had been learned from previous efforts. The process of building ownership took more than two years, because those leading the effort had determined not to engage in the polarization that had characterized previous efforts. The State Secretariat for Women, Solidarity, and Social Action led the effort to develop a national plan. Data was gathered and disseminated amongst stakeholders. Key ministries were engaged early, including the Ministry of Religious Affairs, the Ministry of Justice, and the Ministry of Health. The State Secretariat also had the support of UNFPA. Further, those who had been opposed to the national plan on women in development were engaged early on in the process, in the hopes that polarization could be avoided. Direct confrontation was avoided and lines of communication were kept open, although parties did not always agree. The State Secretariat engaged a team of religious scholars to assist with development of a Koranic basis for many of the provisions of the national plan, which made it more difficult for critics. Ultimately, the new national strategy was adopted with important buy-in from numerous groups, including the Ministry of Religious Affairs which helped to raise awareness about the plan by encouraging imams to speak about violence against women in Friday sermons. See: UNFPA, [Programming to Address Violence Against Women: 10 Case Studies](#), 31-37 (2007).

Transfer to the local level

National action plans can be very effective, but in many instances information about and commitment to the plan may not reach the local level. This lack of transfer to local communities reduces effectiveness of the plan and hinders progress. Devising a strategy for getting commitment from local communities to implement the national plan at the local level is a key part of implementation.

CASE STUDY – Guatemala’s Municipal Pacts for the Security of Women

In Guatemala, the National Pact for the Integral Security of Women established nine priority pillars. The national plan also included a process of local consultation with municipalities, in recognition of the fact that many problems of violence are very local. This was especially the case in Guatemala relative to femicides in certain areas. The local consultations on developing local strategies for gender equality and violence prevention were paired with discussions about local development. The Municipal Pact program brought together local government officials, civic groups, non-governmental organizations, and community leaders to develop grassroots plans for protecting women. The Municipal Pact program also focused specifically on mapping community assets and resources that could be used to support the nine pillars contained in the national plan. The outcome of these local processes was the development of local Pacts in 20 communities. The positive results, e.g., increased collaboration between the Presidential Secretariat for Women and local governments on gender issues, increased empowerment of women in local communities to advocate for their own rights, awareness-raising, and integration of gender issues into development planning, encouraged the development of local Pacts in additional municipalities throughout Guatemala. See: UNFPA, [Programming to Address Violence Against Women: 8 Case Studies vol. 2](#), 53-57.

Funding implementation

Legislation on violence against women should mandate a budget for implementation. Funding provisions in laws should include all, or a combination of, the following:

- Create a general obligation on the Government to provide an adequate budget for implementation;
- Request allocations of funding for specific implementation activities;
- Allocate funds for use by civil society organizations to assist in implementation of the law;
- Provide incentives for private funding related to implementation of the law; and
- Remove restrictive provisions in laws that negatively impact funding for implementation.

See: [UN Handbook for Legislation on Violence Against Women](#), sec. 3.2.2. Funding is often also required as part of a national action plan to combat violence against women.

General obligations on the government

A general budget obligation to provide a funding stream for implementation of laws on violence against women is an excellent model for ensuring that the goals and activities of the law are achieved. As budgetary mechanisms among governments are variable, so too will be provisions in laws that designate government funding. The following examples highlight the approaches taken by various countries:

- In Israel, [Government Resolution No. 2670](#) related to trafficking requires that the government:
 4. To earmark a special annual budget in the Ministry of Social Welfare and Social Services in the amount of NIS 4.2 million.
 5. To earmark a special annual budget in the Ministry of Health in the amount of NIS 300,000 in order to provide medical services.
 6. The Ministry of Social Welfare and Social Services must implement this Resolution within six months of the date they receive their budget.
 7. Implementation of this Resolution throughout the first year of operation will be carried out in accordance with the quotas and budget determined above. Two months before the end of the first year of implementing this Resolution, the Chairman of the Permanent Directors General Committee Regarding Human Trafficking, in conjunction with the relevant parties, will provide an update about the implementation of the Resolution and the need to make adjustments for the coming years.
- The Republic of Korea's Act on Domestic Violence and Act on Sexual Violence mandate that the state provide support to related causes. The national budget of Korea has line item allocations reflecting this legislative mandate. See: [Act on the Punishment of Sexual Violence and Protection of Victims](#), UN Secretary-general's database on violence against women.
- The Philippines' [Republic Act 9262](#) on domestic violence states in section 45 that: *The amount necessary to implement the provisions of this Act shall be included in the annual General Appropriations Act (GAA). The Gender and Development (GAD) Budget of the mandated agencies and LGUs shall be used to implement services for victim of violence against women and their children.*
- Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) includes dedicated funding for education and public awareness related to violence against women in article 19.6: *The cooperation instruments and procedures between the General State Administration and the Autonomous Communities on matters regulated herein shall include a commitment by the General State Administration to provide funding earmarked for the provision of these services.*

CASE STUDY – Canada

In Vancouver, the government found a unique way to provide some funding for training programs for police. Taking proceeds from civil forfeitures, the government allocated \$250,000 to developing a training program for law enforcement on how to identify the highest-priority, highest-risk domestic violence cases so as to keep perpetrators in those situations from being released on bail. See: Jonathan Fowle, [B.C. to train police, prosecutors on domestic violence](#), March 17, 2010.

Funding for NGOs and civil society

- While states have a primary responsibility to protect and promote human rights, governments may not always be the best entity to provide particular services or to undertake particular activities. Accordingly, providing a dedicated funding stream for NGOs and civil society organizations to implement provisions of laws on violence against women is an important tool to reach out to victims in particular. NGOs often have long-standing relationships in communities and develop a trusted reputation as a safe haven. Moreover, funding for civil society, such as media organizations, can be an important way to ensure implementation of awareness-raising and education on violence against women. The following examples highlight approaches from various countries:
 - Bulgaria: Amendments to the Bulgarian Law on Protection against Domestic Violence in 2009 required a newly dedicated funding stream for NGOs to provide victim services. The new amendments were the result of sustained lobbying by a coalition of [Bulgarian NGOs](#).
 - The Czech Republic: Funds for implementation of the National Strategy to Combat Trafficking were guaranteed from the budget allocated to the Crime Prevention Strategy 2004 – 2007 and from an annual grant program on Prevention of Trafficking in Human Beings and Assistance to its Victims. The Czech government allocated \$283,000 to non-governmental organizations to provide comprehensive assistance and shelter to trafficking victims in 2008. See: [U.S. State Department 2009 Trafficking in Persons Report](#), 120, 2009; [National Strategy to Combat Trafficking in Human Beings 2008-2011](#), 35.
 - United States: The Violence Against Women Act, and its reauthorizations, provide significant funding for community-based groups and NGOs in the US. The funding is allocated through competitive grant programs targeting specific objectives such as court training and improvements, legal assistance for victims, culturally and linguistically specific services for victims, rural programs, transitional housing, university campus safety, engaging men and youth, sexual assault services, etc. See: Office on Violence Against Women, [Grant Programs](#).
- Importantly, ensuring adequate funding can also require changes in law to remove restrictions on the ways in which NGOs work, provide services, or use government funds. In some countries, for example, NGOs that take certain types of government funding may be prohibited from providing services to undocumented immigrants. This can impact many women who are victims of numerous types of violence, including sexual harassment, forced marriage, trafficking, FGM, or domestic violence to name a few examples. These and other similar provisions in laws should be removed to ensure that there is no implementation gap because of funding restrictions.

Private Funding

Drafters should review national laws and policies to ensure that disincentives for private donors who may wish to fund implementation of programs to end violence against

women are removed. Moreover, drafters should examine legislative and policy strategies to encourage private funding of violence against women programming. This might be in the form of taxation incentives, public-private partnerships, or matching grant programs to encourage private sector contribution to implementation of laws on violence against women.

Example – USA

The U.S. Secretary of State has established a Fund for Global Women’s Leadership focused on accelerating the movement to end violence against women. The Avon corporation, a company focused on products for women, has partnered with the Department of State to support the program and has provided US\$500,000 funding for grants to NGOs that work to end domestic violence and other forms of gender-based violence. See: [Press Release](#), Avon Foundation (March 11, 2010.)

Police & other law enforcement professionals

In order to effectively address violence against women, laws and national action plans should require the engagement of and coordination between multiple sectors and groups, both public and private. This section discusses measures specifically related to ensuring that the police and other law enforcement officials effectively implement laws on violence against women. The quality of police work is crucial for implementation. Acts of violence against women must be investigated thoroughly and documented precisely.

Laws on Police Role in Implementation

- Detailing the specific duties and roles of law enforcement officers in legislation can be an effective means of enhancing implementation of laws aimed at ending violence against women. Many countries include specific provisions related to police implementation in their laws. Often these provisions fall into four general categories:
 - Requiring coordination with other entities; [See CCR section above]
 - Mandating the creation of special units;
 - Requiring specialized training; and
 - Detailing specific procedures to be used in investigation.
- For example, Albania’s law on [Law on Measures against Violence in Family Relations](#) contains several provisions that specifically relate to police, including:
 - Establishing “special units at the police departments to prevent and combat domestic violence” (Art. 7);
 - Requiring the Ministry of Interior to “train members of the police force to handle domestic violence cases” (Art. 7);
 - Requiring that police “record their findings in a written report and start investigations upon their own initiative (sua sponte)...The police gives the incident number to the victim” (Art. 8);
 - Requiring that police “take all necessary steps to ensure immediate and continuous implementation/execution of protection measures” (Art. 23).

- Bangladesh's [Acid-Offences Prevention Act of 2002](#), relating to honour crimes, specifies that police must "complete the investigation within thirty days from the date the information relating the offence [was] received or the Magistrate orders for investigation" or ask for a special extension. (Art. 11).
- India's law on sex trafficking mandates that special police officers be designated in each Indian state to specifically focus on trafficking crimes. (Art. 13).
- Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) requires the establishment of "dedicated units within the national law enforcement and security agencies specialising in the prevention of gender violence and supervising the enforcement of the legal measures adopted." (Art. 31).

Police training

- Providing regular and effective training to police regarding the dynamics of violence against women, laws in their jurisdiction, and their role in protecting women is perhaps one of the most critical pieces of implementation. If police do not know or understand the provisions of laws that protect women from violence, they are not likely to effectively respond to incidents of violence. When police fail to effectively respond to violence against women, often the first line of defense for those in immediate danger has been lost.
- Training should be a collaborative effort between police and women's advocates. [Working Effectively with the Police](#) is a guide for advocates who want to develop a relationship with police that will serve to protect women. The guide contains a section specifically on tips and techniques for police training. The [International Association of Chiefs of Police](#) makes available on its website extensive training materials related to violence against women. These materials are designed for use with officers at roll-call and in other settings and cover trafficking, sexual assault, domestic violence, and domestic violence committed by police officers. The Commonwealth Secretariat has also published [Guidelines for Police Training on Violence Against Women and Child Sexual Abuse](#) focused on the 54 countries represented in the Commonwealth.
- Police training should start early, preferably as part of the police academy before students actually enter the police force. In Paraguay, students at the Police Education Institute attend trainings on the implementation of Law 1600, related to family violence. See: [Trainings on Gender, Violence, and Law 1600](#), UN Secretary General's database on violence against women. In Timor-Leste, a training program on domestic violence developed for police academy students has since been expanded to the entire force and has developed into a gender-based violence train-the-trainer program. See: [Training Manual on Domestic Violence for Police](#), UN Secretary General's database on violence against women.

CASE STUDY – Albania

Albania's law on [Law on Measures against Violence in Family Relations](#) contains requirements for police training. In response to these provisions, a [Police Protocol on Domestic Violence](#) cases was developed to assist in training police officers. The protocol is highly detailed and also specifically refers to sections of the Albanian law and criminal procedure code. This specificity in linking police responsibilities to the language of the new law helps police understand that their duties during an investigation are not simply good practice but are mandated by law.

Special police units/designated officers

The establishment of specialized units or designated officers to respond to cases of violence against women is an important tool for effectively implementing laws that seek to end violence against women. The [U.N. Handbook for Legislation on Violence Against Women](#) recommends that laws should designate and strengthen “specialized police units ... on violence against women, and provide adequate funding for their work and specialized training of their staff.” (Sec. 3.2.4) Violence against women cases can often be complex and require special skills in recognizing the gendered aspects of crime patterns, working with victims and their families, dealing with perpetrators, and coordinating with multiple agencies. Developing these skills requires specialized education, training, and experience.

CASE STUDIES:

Women's Police Stations in Latin America

In the 1980s and 1990s, few Latin American nations had laws on violence against women. In response to growing civil society activism on women's rights and the developing international legal framework of treaties on violence against women, some governments began to establish Women's Police Stations, despite lack of laws. In Brazil, Ecuador, Nicaragua, and Peru these specialized police units actually preceded much legal reform on violence against women. The first station was established in Brazil, which now has more than 400 Women's Police Stations. Women's Police Stations are focused on preventing and investigating violence, receiving complaints, and protecting women. Women's police stations in Ecuador are justice administration entities so they have the authority to punish violence, issue protection measures, and order reparations. In Brazil, the women's police stations now have the authority to remit cases to the corresponding court to issue protection measures. Similarly, the women's police stations in Brazil, Nicaragua, and Peru have the authority to enforce protection measures issued by the courts. See: Nadine Jubb, [Regional Mapping Study of Women's Police Stations in Latin America](#) (2008).

Zambia's Victim Support Unit: Amendments in 1999 to [Zambia's Police Act](#) mandated victim support units at all police stations to focus on rape, domestic violence, sexual abuse, and trafficking as well as certain other crimes. With such heavy responsibilities, funding and adequate human resources have been a challenge for Zambia's Victim Support Unit. Nevertheless, the Victim Support Unit has engaged in innovative activities to provide services to victims. Of 430 victim support officers, 320 are women. The Victim Support Unit collaborated on the opening of a coordinated response center for victims of sexual violence which allows victims to receive medical, psychological and police assistance in one location. Victim Support Unit officers also were trained to provide emergency contraception to victims of rape and defilement crimes in cases when they could not immediately access health services. This special unit also has collaborated with women's civil society groups to produce reports on violence against women and children in Zambia. See: [World Report 2008 – Zambia](#), Human Rights Watch; [Zambia: Curbing Sexual and Gender-Based Violence](#) (2008), Human Rights Watch; Rebecca Mushota, [Emergency pill for victims of rape, defilement](#), Times of Zambia; [Pambazuka Gender Justice and Local Government Summit Awards](#) (2010).

Special investigative and other procedures

Police documentation of criminal violence against women sets the stage for the way that many other actors in agencies and the community react to a woman seeking assistance. Accordingly, clear protocols must be mandated by law or developed as mandatory policy in order to ensure that police documentation facilitates the appropriate implementation of laws system-wide.

CASE STUDY – Saint Paul, Minnesota, USA

The U.S. city of Saint Paul received legislative funding to create a “blueprint” (a highly detailed, foundational document) for how to build an effective criminal justice response to domestic violence. The resulting [Blueprint for Safety](#) focuses on criminal justice agencies only and includes specific guidance for every agency, including what victims need to be safe, what workers understand to be their responsibility to the victim and to all other interveners, and what is required by each worker and agency to hold an offender accountable. Chapter 3 of the Blueprint lays out detailed policies and protocols for police who respond to calls about family violence. The Blueprint includes clear direction for what to do in a variety of situations, including interacting with victims, incidents involving police employees, incidents involving public officials, incidents when children are present or when an offender is gone by the time police arrive, as well as specific guidance for incidents involving stalking or strangulation. The Blueprint also contains checklists for patrol reports about family violence incidents. The Blueprint goes on to present protocols for further investigation of domestic violence cases and also has specific guidance for supervising officers. See: Praxis International, [Blueprint for Safety](#)

Other law enforcement professionals

- It is important to examine all aspects of institutions and systems that may play a role in implementing laws on violence against women. In many countries, training for immigration officials is a critical piece of implementation. For example, following the adoption of the [Anti-Trafficking Act of Thailand](#), the Ministry of Social Development and Human Security's immigration officers, particularly those who would come into contact with possible victims of trafficking among migrant populations, were trained on how to identify and assist trafficked victims, as well as on the legal protections for victims. (See: [Training of Immigration Officers on Trafficking](#), UN Secretary General's database on violence against women)
- In the UK, as in many countries, probation officers are an important part of the equation in domestic violence cases. The government has issued a national policy on domestic abuse specifically focusing on probation officers in relation to the Domestic Violence, Crime and Victims Act of 2004. See: [National Probation Service Interim Domestic Abuse Policy](#), UN Secretary General's database on violence against women.
- Violence against women in prisons is also a serious concern. Many women have experienced violence prior to incarceration or may experience violence during their incarceration. In Japan, the law on penal detention facilities requires human rights training, including training for corrections officers focused on prevention of violence against women and sexual harassment in prisons. (See: [Training Institute for Correctional Personnel](#), UN Secretary-General's database on violence against women. In the UK, [Guidelines on Supporting Women Who Have Been Affected by Violence and Abuse](#) were issued for all women's prisons)

Courts & prosecutors

In order to effectively address violence against women, laws and national action plans should require the engagement of and coordination between multiple sectors and groups, both public and private. This section discusses measures specifically related to ensuring that the justice system effectively implements laws on violence against women, including policies on victims in court, specialized courts and prosecutorial units, training for judges and prosecutors, as well as specialized policies and procedures for handling cases.

Laws on courts' role in implementation

- The court plays an integral role in implementing legislation prohibiting violence against women, as it bears the ultimate responsibility for case outcomes. The court can address the needs of the many victims of violence against women by providing victims with contacts to services, by monitoring the behavior of perpetrators and mandating them to appropriate interventions, and by protecting women from their abusers. A court that is strong and committed to implementing

legislation prohibiting violence against women must also use its authority to demonstrate publicly the civil and criminal justice systems' commitment to effectively addressing crimes of violence against women.

- Many laws also delineate special roles for courts and prosecutors related to effective implementation. In general these laws focus on:
 - Mandating or encouraging special protections for victims in court;
 - Requiring the development of specialized courts or tribunals;
 - Requiring the establishment of specialized prosecutors units;
 - Requiring training for judges and prosecutors; and
 - Requiring the development of special policies, procedures and protocols for handling cases of violence against women.
- India's [Protection of Women from Domestic Violence Act](#) outlines the duties of Magistrates when dealing with domestic violence cases including the timeframe for cases, the ability to conduct hearings in private, and the power to call on specialized service providers to assist with the case. The law also outlines the types of remedies that can be ordered.
- Kyrgyzstan's Law No. 170 on the protection of the rights of witnesses, injured parties and other participants in criminal proceedings enables judges and prosecutors to provide protections to women who have been victims of violence and their immediate family members, including temporary relocation, confidentiality measures, personal protection, and other safety measures. See: [Law No. 170 on the protection of the rights of witnesses, injured parties and other participants in criminal proceedings dated 16 August 2006](#), UN Secretary-generals' database on violence against women.
- The Family Law in Serbia requires the establishment of specialized court councils for cases of domestic violence and also outlines special procedures that courts must follow in cases of domestic violence. See: Family Law, UN Secretary-generals' database on violence against women.
- Some laws also address the roles of other court personnel. Albania's domestic violence law requires training for bailiffs regarding their duty to serve protection orders immediately. See: Law on Measures against Violence in Family Relations, art. 7. Spain's domestic violence law includes specialized Violence against Women courts wherein all employees from judges to court clerks must receive training on issues of gender violence and which focuses on "the vulnerability of victims." See: Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence, art. 47.

The power of courts' response to victims

- Women victims of violence who seek help from the courts take a huge step. They often put themselves at risk of retaliation and further violence from perpetrators simply by seeking justice. This concern is common to all forms of violence against women. One scholar has described women's experience in the judicial system as a "negotiation between women and the state over protection from

violent and abusive men.” The process and outcome of this negotiation is critically important because it sends messages to women and men about how the state views the parties and the actions they have taken. The messages the parties receive often determine future behavior and can critically impact women’s safety.

- These messages often are sent through the attitude, language, and other behaviors of judges, prosecutors, and court staff – not necessarily through the ultimate outcome of the case. Judges, as state-appointed decision makers, have a critical role to play. When judges’ demeanor and language expresses to women that their courage in coming forward is valued, that their safety is paramount, and that violence is unacceptable, women can be emboldened to take further steps to protect themselves. Men are also more likely to be dissuaded from further violence. On the contrary, when judges interact with women victims through overly formal and bureaucratic, dismissive, or belittling behaviors, dangerous messages are communicated to both victims and perpetrators.
- These concerns can in part be addressed through training and development of specialized courts and prosecutorial units. Nevertheless, judges and others who handle cases of violence against women must continually reexamine policy structures as well as their own behaviors to ensure that the justice system is promoting effective implementation of laws on violence against women through every interaction. See: James Ptacek, [Battered Women in the Courtroom: The Power of Judicial Responses](#) (1999).

Policies relating to victims in court

- Provisions to protect women and girls in the courtroom setting should be included in legislation. Many countries and courts have established protocols to lessen the burden on victims of violence when in court and to keep them safe from perpetrators. These measures include limiting the time victims need to be in court, limiting time in proximity to or in the presence of images of a perpetrator, providing anonymity, encouraging the defense and prosecution to work together to reduce unnecessary questioning of witnesses, providing counseling for victims whenever necessary during proceedings, and etc. See: [Best Practice Manual for the Investigation and Prosecution of Sexual Violence Crimes in Situations of Armed Conflict](#) (ICTR 2008).

- UNODC's Model Legislation on Trafficking, for example, contains several provisions aiming to protect victims participating in court proceedings. Article 23 states:
 1. *A judge may order on application, or where the judge determines it is necessary in the interest of justice, and without prejudice to the rights of the accused, that:*
 - (a) *Court proceedings be conducted in camera, ie. away from the presence of media and public;*
 - (b) *Records of the court proceedings be sealed;*
 - (c) *Evidence of a victim or a witness be heard through a video link [or the use of other communications technology] [behind a screen] or similar adequate means out of view of the accused; and/or*
 2. *The judge shall restrict questions asked to the victim or witness, in particular, but not limited to, questions related to the personal history, previous sexual behaviour, the alleged character or the current or previous occupation of the victim.*
- Article 24 of the model law allows for victim impact statements, Article 25 provides for security of personal data about victims and confidentiality of communications between victims and those involved in the court system, and Article 26 allows for victim relocation. See: UNODC, [Model Law against Trafficking in Persons](#).
- In Austria, victims are protected under the criminal procedure code, which allows judges to limit participation of some parties during a proceeding depending on the age or mental health of a victim. The law also allows for use of technology to minimize the impact of questioning on victims as well as the appointment of a special expert to conduct the questioning. See: [Amendment to the Criminal Procedure Code 2006](#), UN Secretary-General's database on violence.
- In the Republic of Korea, the Act on Punishment of Sexual Crimes and Protection of Victims and its accompanying implementation guide specify that victim statements may be submitted in court via video and that when interrogation of a victim is necessary, it should be done by video relay so as to enable the victim to be questioned in a safe, private environment. See: [Act on Punishment of Sexual Crimes and Protection of Victims](#), UN Secretary General's database on violence against women.
- In Switzerland, under the [Law On Assistance for Victims of Crime](#), victims of sexual violence can request to work with and be heard by an official of the same gender in all stages of the proceedings.

Specialized courts/tribunals for violence against women

- The [U.N. Handbook for Legislation on Violence Against Women](#) recommends that laws “provide for the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of cases of violence against women.” (Sec. 3.2.5). When they have adequate resources, there is evidence that specialized units in the justice system are more responsive and effective in enforcing laws on violence against women.
- Around the world, special courts are particularly prevalent for domestic violence, where they allow for integration of a variety of legal processes including criminal, civil, and family law issues. Specialized tribunals often also are established to deal with cases of [sexual harassment](#). Some nations have also created [specialized courts](#) to deal with sexual assault and rape.
- Specialized courts provide a stronger possibility that court personnel will be gender-sensitive, experienced in the unique characteristics of violence against women cases, and may be able to process cases more quickly, reducing the burden on victims. Moreover, judges who consistently deal with cases of violence against women may see repeat offenders and can take appropriate action. Correspondingly, the fact that fewer individuals will deal with these cases can help deter future violence because offenders will expect increasing penalties and greater accountability.

CASE STUDY – Specialized Domestic Violence Courts Around the Globe

Specialized domestic violence courts have been established with positive results in countries around the world including Brazil, Nepal, Spain, the United Kingdom, Uruguay, Venezuela, and several states in the USA. There are some concerns to be aware of, however, when establishing specialized courts. For example, having a concentrated number of judges focused on this issue means that the entire domestic violence caseload rests in the hands of a few. Therefore, a poorly conceived or administered domestic violence court can negatively impact a jurisdiction's efforts to keep victims safe, hold perpetrators accountable, and improve the justice system's response to domestic violence. Finally, dedicated courts and prosecution teams may run the risk of being marginalized. Singling out one court to handle domestic violence issues may generate an understanding of that entity as one that deals with "family" as opposed to "real" crimes, thus undermining efforts to gain recognition of domestic violence as a crime and relegating domestic violence to the realm of the family. See: [Specialized Domestic Violence Court Systems](#), StopVAW, The Advocates for Human Rights; [Nepal: Fast-Track Courts Ordered for Cases Involving Women, Children](#) (2010).

Brazil's experience with special courts highlights some of these issues. In 1995, Special Criminal Courts were created for minor offences. Brazil also has a system of Women's Police Stations to deal with domestic violence and other crimes such as rape. Although not initially designed to hear only domestic violence cases, most domestic violence cases from the Women's Police Stations were sent to the Special Criminal Courts. As a result, some feminists argued that domestic violence was being trivialized and not being treated as a serious crime. After advocacy by women's groups, a new law on domestic violence –called the [Maria da Penha Law](#) – created the Special Courts for Domestic and Family Violence Against Women. The new law, which transferred jurisdiction over domestic violence away from the Special Criminal Courts, recognizes five forms of domestic violence: physical, psychological, sexual, patrimonial, and moral. The new courts take an integrated approach covering not only criminal law, but also aspects of civil and family law including custody of children, alimony/ child support, restitution of assets, and protective orders to keep the perpetrator away from the victim. See: [Regional Mapping Study of Women's Police Stations in Latin America](#), 27 (2008).

Extensive analysis of the successes and challenges of operating domestic violence courts is available, in particular from the United States:

- [Creating a Domestic Violence Court: Guidelines and Best Practices](#): These guidelines are designed to assist communities considering whether to develop a domestic violence court, to determine if such a court structure would be helpful, and if so, how best to model this structure to address local needs.
- [Specialized Criminal Domestic Violence Courts](#): This paper provides a basic overview of issues involved in the specialization of criminal domestic violence courts. To provide a framework for the study of these types of courts, the paper profiles the courts of Seattle, Sacramento, and Vancouver, three cities with representative models.
- [Specialized Felony Domestic Violence Courts: Lessons on Implementation and Impacts from the Kings County Experience](#). This paper evaluates the specialized court in Kings County, California.
- [Judicial Response and Demeanor in the Domestic Violence Court](#): This report summarizes the findings of a court monitoring project of the new domestic violence court in Hennepin County, USA which included observations of over 600 court appearances extending over an eight-month period from January to August 2001.

Specialized prosecutors

The [U.N. Handbook for Legislation on Violence Against Women](#) recommends that laws should designate and strengthen “specialized units on violence against women, and provide adequate funding for their work and specialized training of their staff.” (Sec. 3.2.4) When they have adequate resources, there is evidence that specialized units in the justice system are more responsive and effective in enforcing laws on violence against women. Experience has shown that the establishment of such units may facilitate the development of expertise in this area and may result in an increase in the number of cases investigated, a better quality of case presentation, and more efficient process for the complainant/survivor. However, in some countries, experience indicates that establishment of such units may result in the marginalization of women’s issues. It is, therefore, crucial that specialized units be accompanied by adequate funding and training of staff. (See: [Prosecutorial Reform](#), Stop VAW, The Advocates for Human Rights; U.S. Dept. of Justice, [Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges](#) (2009); see also National Inst. of Justice, [Violence Against Women: Synthesis of Research for Prosecutors](#) (2000))

PROMISING PRACTICE – Saint Paul, Minnesota, USA

The U.S. city of St. Paul received legislative funding to create a “blueprint” (a highly detailed, foundational document) for how to build an effective criminal justice response to domestic violence. The Blueprint for Safety sets out goals and methods to enforce Minnesota criminal laws on domestic violence and maximize successful prosecutions for perpetrators. The Blueprint has the following suggestions for prosecutors:

- Engage in dialogue with the victim and avoid treating her simply as an information source.
- Act in ways that prioritize safety and respect a victim’s precarious circumstances and fear of the offender’s aggression:
 - Request a no-contact order.
 - When a defendant is not held in custody, request pretrial supervision.
 - Be responsive to questions about the risks and benefits of testifying and the risks and benefits of not testifying.
- Respond to domestic violence crimes in ways that are victim safety-centered but not victim-dependent:
 - Use all available sources of evidence that support charges independent of a victim’s direct testimony.
 - Seek charges stemming from a defendant’s actions after police arrival on the scene, witness tampering from jail, and violations of pretrial release conditions.
- Protect victims from retaliation because of their participation in prosecution:
 - Emphasize at every opportunity that it is the prosecutor’s decision on behalf of the community and the state to pursue charges, and not the victim’s decision.

See: Praxis International, [St. Paul Blueprint for Safety: An Interagency Response to Domestic Violence Crimes](#), ch. 6.

CASE STUDY – Philippines

In the Philippines, trafficking of women and girls is a serious concern. In 1995, the Philippine government appointed a special prosecutor on trafficking and 181 cases were prosecuted in the first year. In 2003, the Philippines passed a new anti-trafficking law. By 2007, the government had 17 anti-trafficking prosecutors at the federal level and another 72 prosecutors in regional offices. One 2007 case resulted in a life-sentence for a member of a sex trafficking ring. Despite these efforts, there are nevertheless long delays in some prosecutions, highlighting the need for adequate funding, staffing, and training of specialized prosecutorial units. See: [Philippines – Trafficking in Persons](#), Preda Foundation; [Philippines](#), humantrafficking.org; [The Philippines](#), Coalition against Trafficking in Women, Factbook on Global Sexual Exploitation.

Training for judges

- Training for judges on violence against women should be required under law. The [U.N. Handbook for Legislation on Violence Against Women](#), sec. 3.2.3, recommends that laws mandate:
 - Regular and institutionalized gender sensitivity training and capacity building on violence against women,
 - Specific training and capacity building when new legislation is enacted, and
 - Development and consultation with NGOs and service providers in the process of training development.
- For example, in Spain, Article 47 of the [Organic Act on Integrated Protection Measures against Gender Violence](#) requires that training courses for judges, magistrates, and others involved in law enforcement include specific sessions on sexual equality, non-discrimination for reasons of sex, and issues of violence against women. Training for judges should include a range of topics from broad gender sensitivity training to specific training on the intricacies of dealing with various types of violence against women cases.
- Many organizations provide [judicial training](#) related to violence against women and gender equity. One particularly successful program is the International Association of Women Judges' [Jurisprudence of Equality](#) program, which is focused generally on domestic application of international, regional, and national law on issues dealing with discrimination and violence against women. The New Mexico Judicial Education Center provides on-line training modules for judges relative to specific types of violence against women. Although focused on New Mexico law, the freely available courses include [domestic violence](#), [stalking and harassment](#), and [intimate-partner sexual abuse](#). Another example of issue-specific training comes from Saint Paul, USA, where an interagency [Blueprint for Safety](#) in domestic violence cases includes protocols and training memos for judges in the following detailed areas:
 - Compelling a Domestic Violence Victim to Testify
 - Court Administration in Domestic Violence Related Cases
 - Domestic Violence Risk Assessment Bench Guide
 - Domestic Violence–Related Standard Conditions of Probation
 - Firearm Prohibitions
 - First Appearance of Offender in Court
 - General Standard Conditions of Probation
 - Law Related to Pretrial Release
 - List of Probation Conditions to Consider in Domestic Violence–Related Cases
 - Memorandum on Consecutive Sentencing
 - Memorandum on Legal Considerations in Probation Violations Based on a New Offense
 - Memorandum on the History of Relationship
 - Minimum Sentences in Domestic Violence Cases
 - Pleas
 - Practitioners' Guide to Risk and Danger in Domestic Violence Cases

- Pre-sentence Investigations
- Pre-Trial No-Contact Orders
- Pre-trial Release
- Probation Violations
- Sentencing
- Special Conditions of Probation to Consider in Domestic Violence–Related Cases
- Special Evidentiary Issues in Domestic Abuse Trials
- Trial
- Using the Probation Conditions List
- Weekend Post-Arrest Procedures

See: [Blueprint for Safety](#), ch. 8 (2009).

CASE STUDY – Kosovo

The Women’s Safety and Security Initiative, funded by UNDP, has focused on supporting implementation of anti-trafficking legislation in Kosovo. In its first year, the program trained judges and prosecutors on the provisions of the new legislation, as well as the dynamics of trafficking and how the abuses suffered by women may impact their ability to cooperate or testify in a criminal prosecution. In its second year, the program trained judges, and prosecutors in coordination with training for police. The training for members of the judicial system focused on interagency coordination and how police, judges and prosecutors can understand each others’ roles and work together, particularly on undercover operations to hold traffickers accountable. Apart from training for members of the judiciary and law enforcement, the program has also trained journalists and regional gender officers and has supported the acquisition of new equipment for police. See: [Fact Sheet](#), Women’s Safety and Security Initiative, UNDP.

Training for judges in a variety of settings

Judicial training should focus on both criminal and civil cases, and should be mandatory for judges in a variety of legal settings including those handling family law matters, immigration, and employment issues. Although many violence against women cases are criminal in nature, civil law plays a huge role. In certain countries, sexual harassment cases are almost all civil in nature. Domestic violence and dowry violence cases also involve significant civil components including protective orders, divorce, and custody issues. Trafficking cases often involve separate immigration proceedings. Judges, prosecutors, and other court personnel in all of these areas need specialized training.

CASE STUDY – United States

The [National Council of Juvenile and Family Court Judges](#) has been a leader in training judges in the juvenile and family court setting to effectively respond to family violence cases. The organization developed [The Greenbook](#), a benchbook on effective intervention in family violence cases, which has been endorsed by the U.S. Attorney General. Under [The Greenbook Initiative](#), the Council also worked with six demonstration sites nationwide to undertake a coordinated community response (CCR) approach to implementing The Greenbook recommendations. The use of The Greenbook and the effectiveness of its guidelines were evaluated in each site, leading to the development of lessons learned and new tools from courts, advocates, and service providers across the United States. The evaluation reports and tools are available on [The Greenbook Initiative](#) website.

Training prosecutors

- The [U.N. Handbook for Legislation on Violence Against Women](#), sec. 3.2.3, recommends that laws mandate:
 - Regular and institutionalized gender sensitivity training and capacity building on violence against women;
 - Specific training and capacity building when new legislation is enacted; and
 - Development and consultation with NGOs and service providers in the process of training development.
 - Prosecutors in particular should be trained relative to:
 - The overall context and patterns that characterize crimes of violence against women;
 - How to make charging decisions;
 - How to engage with victims;
 - Bail and pre-trial release determinations; and
 - Plea agreements and sentencing recommendations.
- See: [Blueprint for Safety](#), ch. 5.

CASE STUDY – UK

The Crown Prosecution Service has been proactive in training its prosecutors about different types of violence against women. All of the approximately 4000 prosecutors and associate prosecutors completed mandatory domestic violence training by the end of 2008. Prosecutors in four areas were trained in 2007 related to dealing with forced marriage and honor crimes and expansion of that training was scheduled for 2009. A mandatory training course for more than 800 rape coordinators and specialist rape prosecutors is to be completed by 2011. Training for unit heads dealing with complex trafficking cases was completed in 2008. (See: [Training of Prosecutors](#), UN Secretary General's database on violence against women)

CASE STUDY – Guatemala

In Guatemala, femicide and other forms of violence against women have been an extremely serious problem, with hundreds of women killed each year. A poorly trained justice sector was identified as one factor helping to perpetuate the violence. To attempt to redress the problem, more than 100 prosecutors from across Guatemala were trained through a USAID-UNICAP partnership. The training covered the economic, social, and political implications of gender disparity and included a multicultural sensitivity component to address the unique concerns of indigenous women. (See: USAID, [Annual Report on Good Practices, Lessons Learned, and Success Stories](#), 10 (2006))

Special policies, procedures, and protocols

- Documenting special procedures for prosecutors and courts to follow in cases of violence against women is an important step in implementation of laws. Policy documents, protocols, and procedures should be developed in consultation with women's groups and should maintain a focus on safety of victims and holding [perpetrators accountable](#). Often these efforts take the form of written prosecutorial policies, implementation plans, or bench guides for judges. The absence of clear policies and procedures can lead to confusion and lack of protection for women. For instance, a project designed to build capacity in the EU to enforce laws against FGM conducted workshops with professionals from several countries. Workshop participants identified a lack of available protocols and procedures for risk assessment and reporting as a significant barrier to implementation of laws. See: Leye Els et al., *Striking the right balance between prosecution and prevention of FGM in Europe – A review of legislation* (2009).
- In Kenya, after the passage of the [Sexual Offences Act](#), the Attorney General's office and Women in Law and Development in Africa (WILDAF) created a reference manual for prosecutors and other sectors to disseminate best practices for implementation. See: Anne Kithaka, [Enforcement of the Sexual Offences Act in Kenya](#) (2008).
- In the UK, the Crown Prosecution Service has developed a [Policy for Prosecuting Cases of Domestic Violence](#). The policy addresses numerous issues including the role of the prosecutor, sufficiency of the evidence, bail, charging, plea bargaining, avoiding delay, support and safety for victims, civil proceedings, children, keeping victims informed, sentencing, and community engagement.
- In Sweden, the government promulgated a 'Manual for investigations concerning men's violence against women' as well as a specific 'Manual for investigating violence and oppression in the name of honour,' both designed for prosecutors. The government noted that the manuals were designed "to improve preliminary investigations and also to ensure professional and efficient support to victims from the first point of contact with law enforcement and through the entire legal proceedings." See: [Sweden](#), UN Secretary-General's database on violence against women.

- In the post-conflict environment, the Office of the Prosecutor of the International Criminal Tribunal for Rwanda created a [Best Practice Manual for the Investigation and Prosecution of Sexual Violence Crimes in Situations of Armed Conflict](#) which gives specific information to prosecutors and staff in the prosecutor's office on how to handle sexual violence cases so as to keep victims safe and end impunity for sexual violence.

Bench guides

Bench guides for judges also are a helpful means of highlighting provisions in new laws and assisting judges in correctly applying and implementing the law. In the US state of Minnesota, after the death of two women and a police officer as a result of domestic violence, the state's highest court approved the distribution of a bench guide for judges handling domestic violence cases. The [Domestic Violence Risk Assessment Bench Guide](#) provides judges with simple questions and instructions to guide them through a process of assessing risks to women's safety in domestic violence cases.

CASE STUDY – Albania

After a new gender-equitable Family Code entered into force in Albania local stakeholders partnered with USAID to develop practical explanatory publications to help implement the new code. Under the leadership of the Magistrates' School, a 120-page Family Law Benchbook was developed. The benchbook first outlines the specifics of the law and its interconnection with existing law, then presents detailed information about implementing the law effectively, and ends with specific forms and detailed procedures. The benchbook is designed to help Albanian judges to effectively implement Albania's Family Code. A specific [Albanian Judicial Benchbook on Protection Orders](#) in domestic violence cases was also developed. The protection orders benchbook covers the following areas:

- What are Domestic Violence Crimes
- What Kind of Family Relations Qualify Under the Law
- Is There More Than One Type of Protection Order
- Who Can Ask for a Protection Order
- What Types of Orders Can be Made
- What Should be in the Petition
- Where is the Petition Filed
- How Soon is the Hearing
- What Evidence Can be Taken at the Hearing
- Who Can Testify at the Hearing
- When Should the Court Grant the Petition
- What Language Must be in the Decision
- Is there an Appeal, Amendment, or Termination Procedure
- Once the Order is Issued, Who is Notified
- Who has to Implement the Order
- What Happens if the Protection Order is Violated
- The Special Role of the Courts in Ending Domestic Violence

See: USAID, [Annual Report on Good Practices, Lessons Learned, and Success Stories](#), 8-9 (2006).

Lawyers representing victims

- Much training and information dissemination focuses on judges and prosecutors, but the lawyers who represent victims of violence in court should not be forgotten in the process of implementing laws on violence against women. Lawyers representing women victims of violence need training and information on:
 - Dynamics of violence against women;
 - Specialized interviewing techniques;
 - Safety planning for their client;
 - How to connect their client to services;
 - Domestic and international laws on violence against women;
 - Child custody; and
 - Evidentiary issues.
- The American Bar Association has developed guides for attorneys who represent victims of violence, as have some states in the United States. The American Bar Association guides include [Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases](#) as well as an online tool [Comprehensive Issue Spotting: A Tool for Civil Attorneys Representing Victims of Domestic & Dating Violence, Sexual Assault & Stalking](#). The US state of New York also has published a guide for lawyers specifically dealing with domestic violence cases, entitled [Lawyer's Manual on Domestic Violence](#).

Health care, social workers & other helping professions

Nurses, physicians, mental health professionals, social workers, teachers, child care workers, and others who provide critical services to women, girls, and families are often the first to become aware of violence against women. Their role in supporting women and helping to ensure their safety is paramount. Further, these professionals often have specific duties mandated by law. [Coordinated community response](#) programs recognize this important role and engage these professions in planning for effective implementation of laws on violence against women.

Laws on helping professionals' role in implementation

Laws on violence against women should recognize the important role of social service providers, whether those providers are civil servants or private actors. Drafters should include the following types of provisions relative to social service providers:

- Mandating effective service provision to victims
- Mandating training
- Mandating non-discrimination against and/or special services for victims of violence
- Mandated integration of services or collaboration with other sectors
- Mandatory policy development

The following are examples of the ways in which some countries have included these types of provisions in their laws on violence against women:

- *Mandating Provision of Services*

In Mongolia, the [Law on Combating Domestic Violence](#) gives victims a right to “to be taken to a medical institution for medical treatment.” See: Article 12.1.2. Further, Mongolia’s law makes medical personnel legally responsible for their failure to provide appropriate services. Article 18.1 states that “[j]udges, policemen, doctors and medical workers, who failed to fulfill their duties envisaged in the present Law, shall be held liable according to the pertinent legislation.”

The Republic of Korea’s [Act on the Prevention of Domestic Violence](#) requires medical facilities to provide victims with services for mental or physical injury, if requested to do so by the victim, a family member, or a counselor. The law also allocates the costs of the treatment to the offender or to the state and/or treating institution if the victim so requests. See: Art. 18.

- *Mandating Training*

The [Anti-Violence against Women and their Children Act](#) in the Philippines requires all agencies responding to violence against women and their children to undergo education and training on a) the nature and causes of violence against women and their children; b) legal rights and remedies of complainants/survivors; c) services available; d) legal duties of police officers to make arrests and offer protection and assistance; and e) techniques for handling incidents of violence against women and their children.

Spain’s [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) states in Article 15 that:

1. *The health authorities, through the Interterritorial Council of the National Health Service, shall promote and facilitate actions among health professionals for the early detection of gender violence, and will deploy all the means they consider necessary to optimise the health sector’s contribution to combating this type of violence.*
2. *In particular, sensitisation and ongoing training programmes shall be organised for healthcare professionals in order to facilitate and improve early detection and the care and recovery of women suffering gender violence.*
3. *The competent educational authorities shall ensure that degree and diploma programmes and the specialisation courses aimed at social work and healthcare professionals incorporate contents to skill them in the prevention and early detection of gender violence, taking action in cases and providing supports to victims.*

- *Mandating non-discrimination against and/or special services for victims of violence*

In Spain, under the [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) the education authorities “shall take the necessary steps to ensure the immediate school enrolment of children when a woman changes residence for reasons of gender violence.”

In Israel, the 2001 *Amendment no. 7 to the Prevention of Violence in the Family Law* established a duty upon certain professionals detailed below, to inform a person treated or advised professionally, reasonably thought to be the victim of a violent or sexual offence committed by her current or previous spouse, of her options – turning to the police, social service department, or centers for the treatment and prevention of domestic violence. The duty applies to the following: doctors, nurses, pedagogues, social workers, police officers, psychologists, clinical criminologists, para-medical personnel, lawyers, religious scholars, and rabbinical leaders. See: [Amendment No. 7 \(2001\) to the Prevention of Violence in the Family Law](#), UN Secretary-general’s database on violence against women.

- *Mandatory Policy Development*

Sweden’s [Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students](#) requires that the national education agency create a policy for prevention of sexual harassment in schools. Many laws on sexual and other forms of harassment around the world require this type of policy development by schools.

In Belarus, the Ministry of Public Health was mandated to develop protocols and guidelines, including for the provision of free medical services, so as to implement the government’s directives on combating human trafficking. See: [Belarus](#), UN Secretary-general’s database on violence against women.

Training

Social service providers, health workers, and educators should be required by law to receive training on provisions of laws on violence against women, especially their roles and best practices for supporting victims and families and holding offenders accountable. It is also important to think broadly about where women may be at risk for violence and which professionals should be trained – for example, training of civil servants can be an important aspect of implementation.

Training for Health Workers

Many resources for training health professionals related to violence against women are available, including:

- UN Population Fund, [A Practical Approach to Gender-Based Violence](#), available in English, French and Spanish.
- US Agency for International Development, [Gender-Based Violence: A Collection and Review of Existing Materials for Training Health Workers](#), which is a compendium of training modules from organizations around the world.
- The International Planned Parenthood Foundation, [Improving the Health Sector Response to Gender-based Violence: A Resource Manual for Health Professionals in Developing Countries](#), available in English and Spanish.

More resources are hosted by the [Human Resources for Health](#) global resource center.

CASE STUDIES

Domestic Violence in Switzerland

The City of Zurich's Gender Equality Office has been proactive in addressing the issue of domestic violence. In the 1990s, the office designed a training program for police, the judiciary, and counseling services. Based on the success of that program, the office developed a pilot training program for health professionals in 2002 in coordination with the Maternité Women's Clinic. The development of the training program was evidence-based, starting with survey data collection from hospital staff and patients. Surveys of hospital staff revealed that many were confronting issues of violence against their women patients, but that there were several barriers to effectively addressing the problem. Staff noted that they felt insecure or lacked sufficient knowledge to assist patients who were experiencing violence, and some staff also noted that they were or had been victims themselves. Moreover, staff cited language barriers, time pressures, and difficulty recognizing the signs and symptoms of violence. The survey of patients revealed that one in ten patients experienced physical assault or threats from a person close to them in the 12 months before the survey, and more than a quarter had experienced violence at some point in their adult lives. Women listed several health and psychosocial consequences that they had experienced as a result of the violence, including: bruises, swellings, contusions, hair torn out, facial injury, nausea, vomiting, grazes, abdominal pain, sprains, pulled muscles, open wounds, cuts, burn wounds, fainting, unconsciousness, genital injury, complications in pregnancy, broken bones, fractures, internal injury, miscarriage, problems sleeping or nightmares, difficulties in relationships with men, problems with sexuality, thoughts of suicide, eating disorders, and problems at work.

Based on these results, the team from the Gender Equality Office and experts from the clinic worked together to develop and pilot test a training program as well as a procedure for staff to follow in screening for and dealing with women who experience violence. Staff were trained in two phases, first acquiring basic knowledge about the dynamics of domestic violence, and second receiving specific training on how to screen and intervene in cases of domestic violence using the hospital's new guidelines. The guidelines covered:

- The definition of domestic violence;
- Indicators;
- Explanations of screening;
- Carrying out the conversation;
- The procedural order of the screening and conversation;
- Documentation sheets;
- Doctor's report;
- Offers of help;
- Internal flow of information and professional duty of silence;
- Setting boundaries and protecting oneself; and
- Dealing with relatives who practice violence or threaten to do so.

Moreover, informational brochures and other awareness materials for patients were produced in seven languages including German, French, English, Spanish, Tamil, Albanian, and Croatian so as to let patients know that domestic violence is something they could safely talk about at the clinic.

[See: Zurich: training of health professionals \(2002\); The Project “Domestic Violence – perception – intervention” in the Maternité Women’s Clinic, City Hospital, Triemli, Zurich \(2008\).](#)

Trafficking in Tanzania

In Tanzania, new anti-trafficking legislation passed in 2009. The law reflected a new commitment on the part of the Tanzanian government to eliminate trafficking. In combination with the new legislation, the government also supported increased training activities for several sectors including police, immigration officials, and health workers. The Ministry of Health conducted train-the-trainer sessions on human trafficking for health coordinators from 21 Tanzanian regions who were then able to provide training in their own region for additional health workers. See: U.S. Dept. of State, [Trafficking in Persons Report](#) (2008);

Sexual Assault in the USA

Sexual Assault Nurse Examiners (SANE) are specially trained nurses with advanced education and clinical education in the forensic examination of sexual assault survivors. These nurses allow victims to receive prompt and compassionate emergency care from medical professionals who understand victimization issues, are adept at identifying physical trauma and psychological needs, can ensure that victims receive appropriate medical care, and know what evidence to look for and how to document injuries and other forensic evidence for potential prosecutions. Information about establishing SANE programs in urban and rural communities is available on-line. See: [Sexual Assault Nurse Examiner \(SANE\) Programs: Improving the Community Response to Sexual Assault Victims](#), U.S. Dept. of Justice Office for Victims of Crime (2001); [Implementing SANE Programs in Rural Communities](#).

The forensic physician problem in domestic violence cases

Domestic violence victims seeking justice may find that one of the most difficult hurdles to overcome is procedural or evidentiary requirement common to many legal systems—the medical legal certificate issued by forensic physicians. In many countries, women are required to obtain a medical certificate documenting their injuries before they can proceed in court. In central and eastern Europe for example, access to court either requires or depends heavily on forensic medical certificates to prove domestic violence. Forensic doctors examine a woman and document her injuries with a certificate. The certificate indicates the seriousness of the injury and the corresponding category of assault that can be prosecuted. Research reveals many problems with the forensic medical certificate system, including the fact that few forensic doctors receive any training on how to work with domestic violence victims. As a result, doctors may use their personal notion of fairness and take into account what they see as mitigating circumstances when filling out the certificates. In some cases, forensic doctors may

determine that a woman provoked an attack and grade her injuries at a lower level. As a result, domestic violence cases are in reality adjudicated by medical rather than legal professionals.

See: [Forensic Medical Systems](#), StopVAW, The Advocates for Human Rights; Cheryl Thomas, Domestic Violence, in 1 Women and International Human Rights Law 219, 225 (Kelly D. Askin & Dorean M. Koenig eds., 1999); The Advocates for Human Rights, [Lifting the Last Curtain: A Report on Domestic Violence in Romania](#), 12 n.41 (1995); The Advocates for Human Rights, [Domestic Violence in Poland](#), 36 (2002); The Advocates for Human Rights, [Domestic Violence in Moldova](#), 31 (2000).

Training for social workers

- Resources on violence against women for social workers are very contextual, depending on the work setting of the social worker, the legal framework, and the type of violence under consideration. Nevertheless, the International Federation of Social Workers has issued a policy statement on the profession's commitment "to enhancing the well being of women and girls as an essential aspect of the profession's ethical and practice commitment to human rights." See: [International Policy on Women](#), IFSW. The International Federation of Social Workers has also developed a manual on [Human Rights and Social Work](#) as well as on [Social Work and the Rights of the Child](#), both of which address violence against women and girls.
- Specific countries have also undertaken initiatives to train social workers on violence against women. [Estonia](#) created a manual for social workers on dealing with victims of trafficking and [Armenia](#) trained social workers on domestic violence issues as part of a program to prevent family violence. In the United States, the Women's Justice Center has created a guide called [Tips for Social Workers, Counselors, Health Workers, Teachers, Clergy, and Others Helping Victims of Rape, Domestic Violence, and Child Abuse](#). The guide focuses on five key areas, including:
 - Connecting the client to resources;
 - Helping the client build a support system;
 - Tracking and monitoring the client's case;
 - Making the system work for the client; and
 - Knowing the client's rights.

Training for educators

Teachers often are in a position to recognize and assist students or their mothers who have experienced violence. Many states require that educators report suspected incidents of violence to appropriate authorities, as noted above. It is also recommended that educators be empowered to address violence against women and girls. Governments should ensure that:

- All schools receive guidance to help prevent and respond to violence against women and girls;
- Students are taught about gender equality and violence against women and girls as part of the standard curriculum;
- Teachers are given clear advice on how to deal with suspected cases of violence against women and girls in their schools and referring young girls at risk to support services.

See: UK Dept. for Children, Schools and Families, [Violence Against Women and Girls: Advisory group final report and recommendations](#) (2010).

CASE STUDY – UK

The Department for Children, Schools and Families has created a plan to ensure that teachers in the United Kingdom receive extensive training on violence against women and girls, including information about domestic violence, sexual exploitation, female genital mutilation, and forced marriage. Moreover, beginning in 2011, teachers will receive additional training on these issues and information about these topics will be included in the standard school curriculum in the UK as part of the Personal Social Health and Economic Education component of the curriculum. See: Dept. for Children, Schools and Families, [Violence Against Women and Girls: Advisory group final report and recommendations](#) (2010); [Guidance on Safeguarding Children and Safer Recruitment in Education](#) (2007).

Training for civil servants/government officials

Because of their role as representatives of the state, the response of government officials, from front-line civil servants to departmental heads, is a key part of the state response to violence against women. The [UN Handbook for Legislation on Violence Against Women](#), sec. 3.2.3, recommends regular and institutionalized gender-sensitivity training and capacity-building on violence against women for public officials..

CASE STUDY – Sexual Harassment in Korea

In the Republic of Korea, several laws require training for public officials regarding violence against women and sexual harassment. These training programs have their legal basis in the Framework Act on Women’s Development, the Act on National Human Rights Commission, the Act on Sexual Violence, the Act on Domestic Violence, the Act on Sexual Harassment, the Act on Child Welfare, and the Act on the Prevention of the Sex Trade. Training is provided by the [Korea Institute of Gender Equality Promotion & Education](#). The trainings focus on sexual harassment but also on gender sensitivity promotion, gender equality policies, sexual harassment complainants counseling, and sexual violence prevention. See: [Korean Institute for Gender Equality](#), UN Secretary General’s database on violence against women.

CASE STUDY – Violence Against Women in Venezuela

Venezuela passed an expansive new law on violence against women in 2007. The new law requires training for judges, police, prosecutors, health personnel, as well as civil servants. According to government reports, training in violence prevention and awareness of the legal and institutional framework related to the subject has been targeting government officials since 2000. With the passage of the new law, however, there has been an increase. In a two year period since the law’s passage, more than 7000 people were trained on legal background and framework, the scope and basic concepts of the law, forms of violence, criminalization, legal procedure, the complaints process, measures of protection and security, and safety planning. Despite this apparent success in training, implementation of the broad provisions of the law remains a challenge in Venezuela. Although a budget had been allocated, an implementation plan had not been finalized as of March 2008, which was the deadline for establishment of new specialized courts to deal with violence against women. See: [Training of civil servants](#) (2000); Immigration & Refugee Board of Canada, [Venezuela: Implementation and effectiveness of the 2007 Organic Law on the Rights of Women to a Life free of Violence](#) (2008).

Establishing specialized programs and protocols

Health centers, schools, social work centers and other service providers should establish special programs that focus on identifying and supporting victims of violence in compliance with newly passed laws. These programs can be highly variable based on the specific issue they confront and the context in which they are created. However, victim safety and holding offenders accountable should be at the center of any special program. Moreover, programs should be effectively integrated with existing institutional structures and take care to garner buy-in and investment from staff in these systems.

Often special programs focused on violence against women take the form of one-stop centers. These centers may be a key part of a coordinated community response program and include counselors, lawyers, health professionals, and social service support all in one location.

CASE STUDY – India

In Mumbai, a partnership between a health policy NGO and a municipal public health department led to the first hospital-based domestic violence crisis center in the country. Known as Dilaasa, the center is based near the casualty ward at the K.B. Bhabha Municipal General Hospital in Bandra, Mumbai. Dilaasa, designed as a one-stop center, is staffed by a social worker, a part-time doctor, and a part-time clinical psychologist. A lawyer also visits the center once a week.

The project began with a needs assessment conducted by the Dilaasa NGO partnership, which examined the operational structure of the hospital's response to victims as well as the knowledge and perception of staff about domestic violence. A checklist of signs of domestic violence was developed and distributed throughout the hospital. After the needs assessment, the project began a train-the-trainer program for hospital staff. Twelve staff from the hospital then trained the rest of the medical and paramedical staff at the hospital on their role in identifying and responding to women presenting at the hospital who they suspect might be victims of violence. The needs assessment also led to a new program at the hospital to provide emergency shelter for women who cannot be admitted to other local shelters. Women who qualify are admitted to the hospital for emergency shelter for 24 hours.

Dilaasa is considered a department of the hospital, which allows for important integration. Information about the center is available throughout the hospital on posters and pamphlets. Doctors all have access to checklists to help them identify victims of domestic violence. When women are referred to the center, they meet with a counselor who can assist with shelter and safety planning. They also receive information about their legal rights. Women who want to take legal action are referred to Dilaasa's lawyer. Women who choose not to file a formal police complaint are encouraged to file a non-cognizable complaint, which allows a police officer to record a victim statement without initiating formal action against the offender at that time. Dilaasa's referrals have increased steadily, from 111 in the first year of operation to 340 in the fourth year. See: [Establishing Dilaasa: Documenting the Challenges](#), CEHAT (2005).

CASE STUDY – Philippines

In order to effectively implement its national laws, as well as the international agreements that it has ratified, relative to violence against women, the government of the Philippines has created performance standards and assessment tools for each of the various sectors that address violence against women, including:

- [Department of Health \(DOH\) for medical or hospital-based services](#)
- [Department of Justice \(DOJ\) for legal/prosecution services](#)
- [Department of the Interior and Local Government \(DILG\) and Local Government Unit \(LGUs\)](#)

Standards were also designed for the police and psychosocial services. The performance standards address policy, physical facilities, personnel, resources, services and protocols, information and advocacy, and monitoring and evaluation for the provision of services to victims of violence against women. The standards are linked to national law and international agreements, so as to assist service providers in understanding their legally mandated roles. See: [Performance Standards and Assessment Tools for Services Addressing Violence Against Women in the Philippines](#) (2008), UN Secretary-General's database on violence against women and girls.

Employers & unions

Legislation should address women's economic empowerment (See [victim services](#)), access to the labor market, and safety in the workplace as key components of implementing laws on violence against women. Relative to employers, laws should:

- Mandate that employers not discriminate against victims of violence
- Mandate that employers reasonably accommodate the special needs of women victims of violence (leave, flex time, transfers, etc.) to enable them to maintain their employment
- Require that employers coordinate with women at risk of violence on safety planning in the workplace
- Place a duty on employers to maintain a workplace that is free of sexual harassment and violence against women

Employers are a primary focus of legislation when it comes to sexual harassment in the workplace. For more information on drafting legislation relative to sexual harassment, see the [Sexual Harassment](#) chapter. But as noted above, employers' supportive role goes well beyond preventing sexual harassment in the workplace. Relative to unions, legislation should facilitate unions' ability to advocate on behalf of the rights of their women members.

Legislative approaches worldwide

- In France, the entity that regulates unemployment insurance introduced a new category of legitimate resignation enabling women victims of violence to receive unemployment benefits when they have to change their place of residence as a result of violence. See: [UNEDIC Convention of 18 January 2006](#), UN Secretary-General's database on violence against women.
- Israel's [Prevention of Family Violence Law](#) prohibits employers from firing women who need to move to a shelter because of violence.
- Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) modified articles of several Spanish laws such as the Employment Act, the Workers' Statute Act, the Organic Judiciary Act, the Civil Service Reform Act and the General Social Security Act to protect the rights to employment of women who have been victims of violence. For example, one such change was a new section 5 added to article 30 of the Civil Service Reform Act 30/1984 of 2 August, which states:

In cases where female civil servants suffering gender violence have had to be absent from work for related causes, such absence, whether total or partial, shall be deemed to be justified, for the time and under the conditions stipulated by the social services or health services, whichever is relevant. Female civil servants who are the victims of gender violence shall have the right to a reduction in their working day, with a proportional reduction in wages, or the reorganisation of work time, through the adaptation of working hours, the application of flexitime or some other available form of work time organisation, in the interests of their protection or to exercise their entitlement to integrated social assistance, under the terms laid down by the government authority competent in each case.

- In the United States, the federal [Family and Medical Leave Act](#) provides victims of domestic or sexual violence, or their family members, with up to 12 weeks of unpaid leave within a 12-month period. Upon returning to work, employers must reinstate employees in their original job or in an equivalent post. Many U.S. states have also implemented similar legislation which may grant greater protection to employees.

Services for victims

Overview

Adequate resources and services for those who are victims of violence are essential to implementing laws on violence against women. These services and resources often are mandated by the law itself. While awareness raising, education and the work of public officials and professionals help create the global and societal changes necessary to curb violence, individual victims will still require direct and personalized attention. Through specialized services women obtain the assistance and tools required to claim their right to a life free from violence. Services for victims also facilitate prosecution of offenders by providing support to the key witness – the victim herself.

The following general principles should be points of reference for all provision of services to victims of gender-based violence:

- Promote the well-being, physical safety and economic security of victims/survivors and enable women to overcome the multiple consequences of violence to rebuild their lives;
- Ensure that victims/survivors have access to appropriate services and that a range of support options are available that take into account the particular access needs of women facing multiple discrimination;
- Ensure that service providers are skilled, gender-sensitive, have ongoing training and conduct their work in accordance with clear guidelines, protocols and ethics codes and, where possible, provide female staff;
- Ensure accessibility of support to all women including those with disabilities, literacy, or language barriers;
- Maintain the confidentiality and privacy of the victim/survivor;
- Cooperate and coordinate with all other services for victims/survivors of violence
- Monitor and evaluate the services provided;
- Reject ideologies that excuse or justify men's violence or blame victims; and
- Empower women to take control of their lives.

See: [UN Secretary-General's In-depth Study on all Forms of Violence Against Women](#), 91 (2006).

Some of the major categories of victim services include:

- Physical and mental health services;
- Hotlines and helplines;
- Short and long-term shelter;
- Legal aid & court accompaniment; and
- Economic empowerment.

Physical and Mental Health Services

States have a duty to provide for the safety and security of those within their territory. Violence against women is a crime and many nations provide compensation to victims to assist them to cover the expenses that they incur as a result of the criminal behavior. These schemes require, however, that crimes are reported to the police in a timely fashion. Medical and psychological services are virtually always a part of these compensation schemes. The United States [Office for Victims of Crime](#) maintains a [Directory of International Crime Victim Compensation Programs](#).

While government compensation programs are an important component of legislation, many victims of crimes of violence against women do not report the crime to the police and are thus ineligible for official programs. Legislation should therefore also include programs to provide funding for NGOs, public health agencies, or medical facilities that provide medical care and psycho-social counseling services to victims.

CASE STUDY – Estonia

An extensive victim support regime exists in Estonia and is administered by the Social Insurance Board. The program was established by the [Victim Support Act](#), which states in Article 1 that the act “provides the bases for state organisation of victim support, organization of conciliation service, compensation of the cost of the psychological care paid within the framework of provision of victim support services, and the procedure for payment of state compensation to victims of crime.” The support scheme assists victims of violent crime and non-violent crime, in some circumstances. The program also covers specified family members of the victim. Under the act, psychological care includes counseling (up to ten sessions), psychotherapy (up to 15 sessions), and support groups. Medical care includes “essential expenses related to the medical treatment of the victim and acquisition of medicinal products and appliances substituting for bodily functions, alleviation of post-traumatic complications, teaching him or her a new speciality [sic] suitable for his or her state of health, and essential travel expenses related to the circumstances specified above.” Victims must report the crime to the police in order to be eligible for services, but the act applies to nationals and aliens alike who are residing in Estonia. See: [Victim Support Act](#) (2003), ch. 3, sec. 12; [Estonia](#), [Directory of International Crime Victim Compensation Programs](#).

PROMISING PRACTICE – Sexual Assault Centers

Sexual assault centers play a unique role in providing very specialized health and psychological services to victims as well as in preserving critical [forensic evidence](#). The US-based [National Sexual Violence Resource Center](#) maintains information about best practices in [developing sexual assault response teams](#) as well as technical bulletins for practitioners in sexual assault centers. The Rape, Abuse, and Incest National Network (RAINN) maintains a listing of [sexual assault centers worldwide](#).

Legal services

- Laws on violence against women should facilitate free legal representation for victims. For example, the [Rape Victims Assistance Act](#) in the Philippines established rape crises centers which provide free legal aid. Guatemala's [Law against Femicide and other Forms of Violence against Women](#) at Article 21 obliges the Government to provide free legal assistance to survivors.
- Some laws also allow third parties, including NGOs, to pursue cases on behalf of victims. For example, the [Sexual Offences Act](#) in Kenya provides for a third party to bring a case where the complainant/survivor is unable to go to the court by herself. The [Criminal Procedure Code](#) in Honduras provides for the possibility of the complainant/ survivor being represented by a duly established organization, such as a women's rights organization. In fact, the Center for Women's Rights in Honduras has acted on behalf of women complainants/survivors, in coordination with the public prosecutor in sexual violence cases.

CASE STUDY – Legal Aid in Macedonia

Through working closely with victims of violence, the [Macedonian Women's Rights Center](#) recognized the need for free legal services and representation in court proceedings for women. In 2005, the group established its Free Legal Aid program. The program informs women about their rights and the various mechanisms by which they can claim them and provides legal advice and representation as well as assistance with document preparation. The program will represent women in criminal, civil, and administrative proceedings. Paramount in the provision of service is developing a relationship of trust and maintaining client confidentiality. The program found that most of its clients were unemployed, low-income, single parents, or others who had faced violence and were experiencing economic difficulty; many were seeking help with divorce and custody determinations. The program at Macedonian Women's Rights Center has been successful in assisting women to gain custody and also win child support in civil cases, and often women are awarded indemnity in criminal cases as well. The group has also successfully assisted women to receive aid through the government's Center for Social Welfare.

- Legal services must be fully funded and adequately staffed. Legal services should be provided at no cost to the victim to ensure that proper legal investigations and processes can be carried out swiftly and effectively without being hindered by the economic status of the victim. Specifically, services should provide survivors with free legal aid in all court proceedings, free access to interpreters, and free translation of legal documents, when requested or required. See: Rowena Guanzon, [Laws on Violence against Women in the Philippines](#) (UN DAW Expert Paper, May 2008).
- A program to provide court accompaniment is also an important component. Many NGOs provide court accompaniment services, which are different from but often just as important as legal representation. A lawyer will advocate for the

client's legal rights in court, but victims also may need a supportive person in the courtroom who is not their lawyer to monitor and advocate for the victim's mental and emotional health during the proceedings.

CASE STUDY – Court Accompaniment in Austria

Amendments to Austria's code of criminal procedure have enhanced protections for victims of violent acts, dangerous threats, or sexual offenses. The program arose out of a pilot project conducted with youth sexual assault victims and their families and is designed at providing psycho-social support and court accompaniment. Not only do protections extend to the victims but under the law victim support services also extend to family members of the victim if the services are directed at preserving the victim's rights in court. The Federal Ministry of Social Security and Generations developed a program to train court accompaniment personnel and to monitor court accompaniment programs. Budgetary funding for court accompaniment reached a total of 4.5 million Euros in 2008. See: [Amendment to the Criminal Procedure Code 2006](#), UN Secretary-General's database on violence against women; [Information for the Special Rapporteur on violence against women](#) (Letter from the Austrian Mission in Geneva, Oct. 2005).

Translation services

In order to effectively implement laws, it is essential that those laws be available in languages that victims, key stakeholders, and the general public can understand. It is important that translations address the difficult and complex task of converting complicated legal concepts and specialized terminology from one language into another. It is also important to have translation and interpretation services available throughout the entire legal process from law enforcement to prosecutors to the courts.

Shelter

- Laws on violence against women should include provision for (1) emergency shelter for victims fleeing violence and (2) longer-term housing options. The Women Against Violence Europe (WAVE) Network has promulgated the following guiding principles for shelters, drawn from a conference of experts. The following principles should be considered in drafting legislation on shelters:
 - Provide 24-hour service
 - Keep the safety of women and children paramount
 - Confidentiality guaranteed
 - No victim's right to stay in a shelter should depend on her financial situation
 - Women helping women
 - Open to all women who are victims of violence
 - Sufficient funding through governments
 - Properly remunerated, well-trained staff

See: [More Than a Roof Over Your Head](#), WAVE Network (2002).

- Related to domestic violence in particular, experts recommend that legislation should mandate a shelter/safe space for every 10,000 members of the population, located in both rural and urban areas, which can accommodate complainants/survivors and their children for emergency stays and which will help them to find a refuge for longer stays. See: [UN Handbook](#), 3.6.1; and [Shelters and Safehouses](#), StopVAW, The Advocates for Human Rights.
- Shelters and safe houses provide women who are seeking protection from violence a means of escape. Such resources provide a temporary place to live removed from violence and also present an opportunity to provide the economic, health, social and legal services discussed throughout this knowledge asset. For many women, these places can provide the immediate emergency services needed when escaping violence as well as assistance to deal with more long term economic and support service. Long-term housing is a critical need as well, to ensure that women can be independent and remain in safety.

Legislative Approaches

Many countries include provision for shelter in their laws, particularly in laws related to [domestic violence](#). Shelters for victims of trafficking, FGM, early marriage, dowry violence, etc. should also be included as part of national legislation and actions plans on these topics.

- In Denmark, every municipality is required to provide temporary accommodation for women victims of violence, women who have been threatened with violence, or women who have experienced a comparable family crisis. Women may be accompanied by their children. However, accommodation may not always be provided free of charge – fees are determined based on the municipality, the services provided, and on the woman’s circumstances. See [Amendment to the Act of Social Service](#) (2004).
- Greece’s [Code on Municipalities and Communities](#) in conjunction with the National Strategic Plan for Development allocates government funds to municipalities to create shelters.
- The Philippines’ [Anti-Violence against Women and their Children Act](#) at Section 40 requires the Department of Social Welfare and Development to provide victims temporary shelters.
- The [Law on Access of Women to a Life Free of Violence](#) in Mexico requires the State to support the installation and maintenance of shelters.
- Turkey’s [Municipality Law No.5393](#) requires the creation of shelters in municipalities with more than 50,000 inhabitants.

CASE STUDIES

Housing for Victims of Trafficking in Israel

Under a government resolution and a national action plan to combat trafficking, Israel outlined a system for short-term and longer-term housing for victims of trafficking. The housing program also integrates rehabilitation services for victims. The Minister of Social Welfare and Social Services is charged with ensuring that victims of trafficking are released from immigration custody into apartments in designated locations across the country for short stays. For victims who “are suffering from severe psychological and medical problems as a result of the crimes committed against them and who need to undergo a process of rehabilitation,” rehabilitation centers are established for stays of up to a year. The resolution also allocates specific funding to the program through the Ministry of Social Welfare. Prior to development of the plan, victims were housed in temporary facilities, homes of activists or volunteers, as well as in other informal settings. See: Tova Ztimuki, [Combating Human Trafficking](#) (Non. 30, 2007); [Government Resolution No. 2670 of December 2, 2007](#).

Shelter for Victims of FGM and Early Marriage in Kenya

The Tasaru Rescue Centre was established in the Narok district of Kenya, one of the traditional home regions of the pastoralist Maasai community, to assist girls escaping FGM and forced early marriage. The Centre houses more than 60 girls who are referred to the Centre by Ministry of Education officials. This referral process and a lengthy intake process ensure that the cases are genuine and that the Centre is not accused of kidnapping. Girls live at the shelter, attend school, and receive rights-based education from the staff. Girls are also supported in reconciling with their families through education and mediation undertaken by shelter staff. The Centre creates alternative rites of passage for Maasai girls in the area, as well as creating alternative sources of income for former FGM practitioners. The Centre has extensive networks of support within the community including government departments, religious and traditional leaders, and national and international NGOs that work in the local area and has worked to establish support among Maasai male opinion leaders. See: UNFPA, [Programming to Address Violence Against Women: 10 Case Studies](#), 49-56.

Long-term shelter & housing

Women’s ability to secure long-term housing can be determined by an array of laws and policies in any given nation or region. For this reason it is critical to establish policies to accommodate victims of violence with assistance for long-term housing. For example, in France a [2007 Decree](#) ensured that in cases of petitions for divorce or separation associated with domestic violence, only the revenue of the spouse or civil partner that is declared in the petition should be taken into account in application for government-provided housing. The Housing Act in Slovenia makes victims of domestic violence eligible for publicly funded or non-profit rented housing. The [Violence Against Women Act \(VAWA\)](#) in the United States provides protection specifically to survivors of domestic violence who utilize public housing. VAWA states that a survivor of domestic violence

cannot be evicted from her shelter provided by housing programs on the basis that she is facing domestic violence. Section 606 amended Section 8 of the United States Housing Act of 1937, to ensure that: 1) a person is not denied public housing assistance on the basis that she is a survivor of domestic violence; 2) an incident of violence is no longer a “good cause” for terminating the lease; 3) the owner of the premises can now divide the lease to maintain the survivor’s tenancy while evicting the perpetrator, if the lease is held jointly; 4) the owner is, however, entitled to take appropriate action if there is an actual and imminent threat to other tenants in the same housing.

Rights-based education, hotlines, and crisis centers

- Including provision for educating women about their options and their rights when they have been victims of violence is an important piece of any legislation on violence against women. Education and counseling often are integrated into shelters providing housing for victims, into medical centers providing treatment, or into one-stop service centers. (See *Awareness-Raising and Education* section)
- Legislation should require a free, 24 hour hotline that is accessible from anywhere in the country and staffed by persons trained in counseling those who have experienced violence. (See: [Crisis Centers and Hotlines](#), StopVAW, The Advocates for Human Rights)
- Legislation should mandate a crisis center for every 50,000 population, with trained staff to provide support, legal advice, and crisis intervention counseling for all complainants/survivors, including specialized services for particularly vulnerable groups. (See: [UN Handbook](#), 3.6.1; and [Crisis Centers and Hotlines](#), StopVAW, The Advocates for Human Rights)
- Italy’s [Law n. 38/2009](#) designated 1,000,000 Euros to the “national hotline for victims of persecution,” which is active twenty-four hours a day, with the aim to provide counseling and legal advice from staff with appropriate skills and to contact the police promptly in cases of urgency. See: Arts. 12, 13.
- Japan’s [Act on the Prevention of Spousal Violence and the Protection of Victims](#) provides for the establishment of Spousal Violence Counseling and Support Centers which provide victims with counseling, referrals, emergency safety planning, self-reliance promotion, shelter information, and information about the protection order system.

Economic empowerment

Measures to facilitate the economic empowerment of victims of violence against women should be included in legislation. These measures might take the form of reviewing [employment laws](#) to ensure that women dealing with violence are not discriminated against or are given special consideration in appropriate circumstances. Measures might also include funding for dedicated government or NGO programs to develop economic independence among women victims of violence.

CASE STUDY – Bulgaria

The [Animus Association](#) in Bulgaria has several programs aimed at economic and employment reintegration of victims of trafficking and those at high risk for trafficking. First, the group works across borders with other NGOs and governments to create referral networks so that victims and at-risk individuals can find their way to appropriate services. Second, the group runs a Rehabilitation Centre for Women, Adolescents and Children Survivors of violence that provides services to help empower them economically and reintegrate them into the employment sector. Apart from these economic empowerment services, the organization works on an integrated model also providing legal assistance and counseling services.

Public awareness & education

- Raising awareness and educating the public about laws on violence against women are fundamental activities that facilitate the effective and efficient implementation of legislation and programs designed to curb such violence. Laws should allocate funds to support activities that will educate the public about the law. Educational programs are often an important part of a coordinated community response and should include messages for all relevant audiences, such as:
 - Women;
 - Girls;
 - Men and boys;
 - Employers;
 - Educators;
 - Government officials;
 - Law enforcement;
 - Judicial system;
 - Service providers;
 - Faith communities and traditional leaders; and
 - Health professionals.
- Moreover, awareness and education helps to prevent violence in the first instance. Multiple campaigns can be organized to target communities at the local, regional, national, and global levels. Public campaigns can be used to raise awareness about an issue on a global, regional, national, or local level, including new or existing laws on violence against women. Raising awareness creates a public discourse that can challenge harmful social norms. Also, campaigns educate the public and victims about existing laws, new laws, and remedies so that women can use them more effectively. Furthermore, campaigns can be a way of communicating solutions to violence against women, and to encourage nations, municipalities and communities to take action and implement strategies that will help end violence against women. This will affect those responsible for implementing laws and will also create a constituency in the general public to encourage effective enforcement of the laws.

- Effective implementation of laws addressing violence against women requires that the victims whom these laws are designed to protect are made aware of the laws as well as the remedies and resources available to them. Thus, awareness raising and prevention education should occur not only at the community level and beyond, but should also be aimed at individual women. Particularly, women who are in high risk groups, such as women traveling abroad in search of work, commercial sex workers, and those with limited access to information require the resources to be fully informed about violence against women, laws, and services. Knowledge of the laws and other available resources help educate women on ways to avoid violence and also inform them of their options if violence has occurred. Along with knowledge and awareness, messages of empowerment must be communicated in outreach programs in order to enhance a woman's ability to take advantage of the resources available to them.

This section presents selected examples of campaigns focused on violence against women, from all regions on each of the topics areas covered in this asset.

Global Campaigns

- [UNiTE to End Violence Against Women](#). The campaign focuses on global advocacy, strengthening partnerships and efforts at the national and regional levels, and leading by example through the UN leadership. States are encouraged to enact, strengthen and enforce laws regarding violence against women. The Secretary-General has also formed a global [network of male leaders](#) to help mobilize men and boys and engage them to help end violence against women.
- [Say No to Violence Against Women \(UNIFEM\)](#). This campaign is a global effort using the internet to promote advocacy to fight violence against women. The movement seeks to make ending violence against women a priority for all governments.
- [The Sixteen Days Against Gender-Based Violence Campaign by the Center for Women's Global Leadership](#). Provides tools to run campaigns at the regional, national, or community level. Campaign materials and links to other information are provided on their website.
- [White Ribbon Campaign](#). The White Ribbon Campaign (WRC) is the largest effort in the world of men working to end violence against women (VAW). In over fifty-five countries, campaigns are led by both men and women, even though the focus is on educating men and boys. In over 60 countries, annual awareness-raising and public education campaigns are led by both men and women, even though the focus is primarily on educating and involving men and boys in ending violence.

Issue specific campaign examples

Domestic violence

- Croatia – A 2003 survey in Croatia indicated that dating violence among teens was a prevalent concern, but that little information on the topic was available for youth. Based on the results of the survey, the [Centre for Education, Counselling and Research](#) created curricula and a website as part of a Dating Violence Prevention Programme. Trained instructors have presented the program with more than 2000 students in 22 Croatian cities and are advocating to make it part of the standard curriculum in schools. See: UNIFEM, [A Life Free of Violence is Our Right!](#), 27 (2007).
- Denmark – The Ministry of Social Affairs and Gender Equality launched a month-long public awareness campaign called [Stop Violence Against Women – Break the Silence](#). The campaign used outdoor posters, buses, trains, television and the internet as mediums for dissemination. [Materials](#) were produced in nine languages, including Danish, English, Bosnian, Turkish, Arabic, Somali, Thai, Russian and Farsi.
- India – [Breakthrough](#) is an NGO in India that uses popular media to reach audiences about human rights, including women’s right to be free from violence. The organization produced [a pop song and music video](#) about a domestic violence survivor that reached 26 million households throughout India and made it to the top ten on Indian music charts. See: [UN Secretary-General’s In-depth Study on All Forms of Violence Against Women](#), 99 (2006).
- USA – [The Clothesline Project](#) was started in the United States by a group of women who wanted to raise awareness about the issue of violence against women. They made shirts that expressed their experiences with violence and hung them on a clothesline for display in a public area. The project has since become an international movement with more than 500 projects around the world and some 50,000 shirts created by women to raise awareness about violence.

Dowry violence

Pakistan – The [Society for the Advancement of Community, Health, Education, and Training](#) developed an awareness program on dowry violence in response to requests from the public. Called Fight Against Dowry, the campaign focused on identifying perceptions, attitudes, and practices in connection with dowry in Pakistani society; informing primarily youth and students about the social, economic, psychological, and health hazards of dowry and dowry violence; engaging mass media in promotion and dissemination of awareness against repercussions of dowry; lobbying for legal reforms, and mobilizing students and parents against dowry. The group produced a [book](#) about dowry violence as well as developing a [television program](#) called “FAD-jahez k khilaf jang”. Each of the 13 episodes of the program dealt with a different topic related to dowry violence, including legal protections and loopholes. See: [Fight Against Dowry](#), The Communication Initiative Network.

Female Genital Mutilation

- Senegal –The NGO [Tostan](#) coordinated a successful community-based education program in one region of Senegal where FGM rates were estimated at more than 85%. Using its Community Empowerment Program structure, the program incorporated human rights education with health education and empowerment activities for women and men. The program measured attitudes among those in the community that received the educational program, as well as measuring reported rates of FGM/C. Both types of measures showed positive change, indicating that there likely was some effect from the program. See: [The Tostan Program – Evaluation of a Community Based Education Program in Senegal](#) (2004).
- Tanzania – As part of the global StopFGM/C network, the Tanzania Media Women’s Association conducted a multifaceted campaign addressing various media - the press, radio, and TV, as well as traditional theatre and poetry. In 1998, Tanzania passed the Sexual Offences Special Provision Act that for the first time outlawed FGM/C. Recognizing that communities were still carrying out the practice in secret despite the law, the association launched a large-scale media campaign. The program included surveys of journalists and the public, development of a media kit, training for journalists, as well as materials produced for the media, including radio spots, TV stories, and press releases. A total of 120 articles on FGM were published by print media, including 39 in English and 91 in Kiswahili which almost 90% of Tanzanians understand. News pieces were also broadcast by TV stations. See: [TAMWA Model Campaign with the Media](#), StopFGM/C.org.

Forced and Early Marriage

- Afghanistan – The Afghanistan Independent Human Rights Commission (AIHRC) celebrated 2007’s International Day for the Elimination of Violence against Women with a campaign called “[Don’t destroy the future of your children by forced marriages.](#)” The day was celebrated through conferences, meetings, gatherings and media broadcasts. Messages from the Chief of Justice, Speaker of the Parliament, Attorney General, Chief of Peace and Stability Commission and people from the general public condemning forced marriages were broadcast by the national and private television channels in Kabul. Billboards with messages on forced marriages were printed and installed in five main squares of Kabul, conveying messages on forced and underage marriages.
- Benin – The Women’s Legal Rights project of USAID carried out an education campaign relative to the new Family Law in Benin that had increased the minimum age for marriage. The project first brought together key civil society groups to collaboratively work on developing materials that could help make the family law understandable for people at the local level. The groups designed a simple version of the law that was translated into five languages. Those organizations involved in the design then all agreed to use the materials to ensure a consistent message in all regions. Along with information in the media,

special events, and t-shirts advertising the new marriage age, the simple version of the law was transmitted through face-to-face workshops around the country presented by trained local facilitators who used the local language. The booklet was so simple to read that organizations began using it in their literacy education workshops as well. The education program also incorporated traditional cultural practices and involved local leaders. See: USAID, [Annual Report on Good Practices, Lessons Learned, and Success Stories](#), 13-14, 17-18 (2006).

Traditional Practices and Faith-Based Initiatives

Mauritania – A project started by midwives in Mauritania to assist survivors of sexual violence benefited immensely from the participation of local imams. The Mauritanian Association for Mother and Child Health (AMSME), a local NGO, was funded by UNFPA and others to increase their training and community education activities around sexual violence. AMSME provides a variety of programs for women and girls, but one of their key strategies in working to change public opinion was to bring imams on board with the project. Project founders targeted progressive imams and gained their support. Imams attended local sensitization workshops and justified the project as a humanitarian program that would benefit the suffering and vulnerable. Imams ultimately developed religious rationales for project activities such as counseling and providing medical care to rape victims. Imams gathered evidence from the Koran and took it to police, magistrates, and government officials to garner support for assistance to rape survivors. See: UNFPA, [Programming to Address Violence Against Women: 10 Case Studies](#), 1-10 (2006).

Honour Crimes

Syria – In 2008, after a widely publicized honor killing in Damascus, the Syrian Commission for Family Affairs convened the first [National Conference on Honor Crimes](#) to raise awareness and encourage dialogue on this issue among government and religious officials. The meeting was also attended by civil society representatives and legislators. The outcome of the meeting was a recommendation for abrogation of certain provisions in Syrian law that allow for impunity for honor crimes. See: [National Forum on Honor Crimes](#); First [National Meeting on Honor Crimes](#), UN Secretary-General's database on violence against women.

Maltreatment of Widows

Awareness-Raising about Marriage Contracts in the Mahgreb – The international NGO Global Rights collaborated with local partners to carry out community consultations to increase women's knowledge and understanding of marriage contracts under Islamic law. Marriage contracts can be an important method to protect the rights of married women, and ultimately the rights of women who become widows and wish to remarry or remain unmarried. Dozens of consultations across Morocco, Tunisia, and Algeria reached more than 1400 women. While the primary objective of the community consultations was to gather the women's perceptions, experiences, opinions and points

of view, the discussions also played a considerable role in awareness raising with regard to the marriage contract and to women's rights in general, not only among the participants but also among external stakeholders and people in the communities where they were held. All of the partner organisations indicated that following the community consultations, many participants and their acquaintances came to the organisation's office to seek legal assistance. See: [Conditions not Conflict: Promoting Women's Rights in the Maghreb through Strategic Use of the Marriage Contract](#), Global Rights (2008).

Sexual Assault

- Scotland – Government support for an NGO coordinated campaign against sexual assault in Scotland led to a five-year national social marketing campaign. Social marketing uses principles from commercial marketing and advertising to change social norms and behaviors. Messages focused on the fact that women are not to blame for sexual violence and used the phrase “no man has the right” along with imagery on buses, billboards, and other public locations. See: [UN Secretary-General's In-depth Study on All Forms of Violence Against Women](#), 97 (2006).
- Cape Verde – In 2004, the government of Cape Verde initiated a campaign, [Quebrar o Silêncio](#), in order to alert victims, and society as a whole, to the problem of violence and the importance of reporting. The campaign, funded by UNFPA, ran for a year throughout the country and had a positive impact, as reflected in the increased reporting of violence and the greater number of victims requesting support. The campaign consisted of radio and television spots, billboards, leaflets, advertisements, awareness-raising sessions, as well as training and capacity building for specialists in the area of gender-based violence. Its main message was that victims should report abuse and seek help since that is the only way to end the violence.
- Mongolia – The [National Centre Against Violence](#) in Mongolia has stepped into a void to provide information about violence against women, including sexual assault, to key decision makers in Mongolia. The Centre distributes a quarterly newsletter “Khelkhee” to parliamentarians, government officials, police, the judiciary, and the public. The newsletter highlights new data about violence, international standards, and local actions related to violence. See: [Organizations Addressing VAW: Mongolia](#), UNIFEM-ESEAsia.

Sexual Harassment

Europe – In 1998, the EU's Daphne project funded an initiative with trade unions in Spain, Sweden, and Ireland to survey union members about their experiences of sexual harassment and raise awareness about the results. The project, called Pandora, highlighted the survey results through press conferences and a publicity campaign and also developed guides on sexual harassment for use by unions and workers. See: [An end to sexual harassment at work, Daphne Illustrative Case#6](#). In 2006, several countries in the European Union implemented an awareness campaign on sexual assault in the workplace. The campaign focused on young women, women looking for

their first job, and women who had experienced sexual harassment in the workplace. The campaign ran for a month in specific cities in Finland, Greece, Latvia, Lithuania, and Poland. See: [Work as a safe place for woman - Information campaign against woman sexual harassment at work](#), Daphne Toolkit.

Sex Trafficking

- Cambodia – Radio broadcasts on sex trafficking and other forms of sexual violence against women were aired nationwide as part of a campaign coordinated by the NGO Banteay Srei. The broadcasts featured interviews with government officials and dramatic episodes that were written in consultation with women’s groups and legal experts. The project also featured an evaluation component in which community monitors brought community members together to listen to the broadcasts and conducted pre and post surveys of knowledge about laws on violence against women. Surveys demonstrated increases in knowledge after listening to the broadcasts. See: UNIFEM, [A Life Free of Violence is Our Right!](#), 17 (2007).
- Israel – In order to raise awareness about trafficking and to encourage promising practices to bring an end of trafficking the government of Israel created the [Official Medal of Honor for the Fight Against Trafficking](#). Medals are awarded each year in three categories: governmental body, a public body, or an individual and only if that body or individual made a considerable contribution to the fight against human trafficking. The awards are presented on December 2, which is the International Day to Eradicate Slavery, and although they do not come with a monetary award they provide recognition to those carrying out excellent anti-trafficking work in Israel. The awards were established by Government Resolution No. 2671 in 2007.

Working with the media

Media professionals should be included in any implementation strategy for a new law on violence against women. In order to effectively implement laws addressing violence against women, the public must first be made aware of those laws. In addition to communicating the substance of the laws, the media can help shape public perceptions about violence against women in general and build public demand for new laws addressing violence against women. The media plays a significant role in educating and raising awareness about violence against women, but that role can have both positive and negative affects on the fight against violence. The subject matter chosen for coverage by the media, in addition to how those topics are portrayed, has a strong impact on the public’s perception regarding those issues. For example, femicide and domestic violence cases are often mischaracterized in the media. Advocates should take seriously the charge to consistently engage with and educate media professionals about the dynamics of violence against women the impact that their work has on the issue. The following resources for media professionals and activists address the issue

of how to present violence against women in the media without perpetuating stereotypes or sensationalizing the subject. (See also [Media](#) sub-section in Advocacy)

- [Picturing a Life Free from Violence: Media and Communications Strategies to End Violence Against Women](#) (UNIFEM)
- [Reporting Gender-based Violence](#) (Inter Press Service)
- [Mission Possible: A Gender and Media Advocacy Toolkit](#) (World Association for Christian Communication)
- [Women and Media Resources](#) (Internews)

Working with faith communities

Policymakers and other stakeholders should engage and dialogue with faith leaders and communities to facilitate effective implementation of laws. Faith leaders and faith communities are powerful forces in the lives of women, girls, and families worldwide. Faith communities often drive the development of, or changes in, social attitudes and practices. They have a critical role to play in educating about and helping to implement laws on violence against women. Accordingly, any integrated strategy to end violence against women must include consideration of how communities of faith will impact the effort, both positively and negatively. The power of faith communities to provide messages that are supportive of women's human rights should be mobilized at every opportunity. Many implementation, awareness-raising, and education programs find that early engagement with influential faith leaders can be a large part of their success. The following resources are designed specifically for faith communities and those working with faith leaders to protect women and girls from violence:

- [Restoring Dignity: A Toolkit for Religious Communities to End Violence Against Women](#) (Religions for Peace, 2009)
- [Mobilizing Religious Communities to Respond to Gender-based Violence and HIV: A Training Manual](#) (USAID, 2009)
- [A Call to Act: Engaging Religious Leaders and Communities in Addressing Gender-based Violence and HIV](#) (USAID, 2009)

Resources for Implementing Laws

- American Bar Association (USA), [Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases.](#)
- Battered Women's Justice Project (USA), [Domestic Violence Risk Assessment Bench Guide.](#)
- Commonwealth Secretariat, [Guidelines for Police Training on Violence Against Women and Child Sexual Abuse](#) (1999).
- Inter Press Service, [Reporting Gender-based Violence](#) (2009).
- National Council of Juvenile and Family Court Judges (USA), [The Greenbook](#) (1999).
- Praxis International, [Essential Skills in Coordinating Your Community Response to Battering: An E-Learning Course for CCR Coordinators.](#)
- Praxis International, [Safety and Accountability Audit Logistics Guide.](#)
- Praxis International, [Blueprint for Safety.](#)
- Ptacek, James, [Battered Women in the Courtroom: The Power of Judicial Responses](#) (1999).
- Religions for Peace, [Restoring Dignity: A Toolkit for Religious Communities to End Violence Against Women](#) (2009).
- UNIFEM, [Domestic Violence: Legislation and its Implementation](#) (2009).
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Monitoring of Laws

Foundation for monitoring of laws

Monitoring mechanisms

How to monitor the implementation of laws on violence against women and girls

Elements of a monitoring report

Tools for monitoring the implementation of legislation

Foundation for monitoring of laws

Goal of monitoring of laws on violence against women and girls

The overarching goal of monitoring of laws on violence against women and girls is to determine the effectiveness of the laws, policies, and protocols, and to determine if amendments or reforms are needed. See: [United Nations Handbook for legislation against women](#), (hereinafter UN Handbook) 3.3.1.

Objectives of monitoring of laws

Monitoring of laws should:

- Determine the prevalence of cases of violence against women.
- Determine the laws, policies and protocols which are used to address violence against women.
- Evaluate laws, policies and protocols used to address violence against women.
- Propose changes in laws, policies, and protocols in order to further the goals of safety for victims and accountability for offenders.
- Reveal unintended consequences of laws, policies, and protocols.
- Reveal gaps in the law, policies, and protocols.
- Pressure a government to apply international standards or to change its actions.
- Reveal the need for a coordinated community response to enforce the laws.
- Reveal the need for capacity-building and training for professionals who must enforce the laws.
- Be performed on a regular basis.

See: [UN Handbook](#), 3.3.1.

Sources of international laws on monitoring

Under the following declarations and conventions, the state has a duty to provide an effective remedy for acts which violate the human rights of women and girls. In order to provide an effective remedy, a state must monitor the implementation of its laws on violence against women and girls.

These agreements outline the duty of a state to protect the rights of women and girls by providing an effective remedy:

- The [Universal Declaration of Human Rights](#), 1948, states that “Everyone has the right to life, liberty and security of person” in Article 3. In Article 7, it states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” In Article 8, it declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
- The [International Covenant on Civil and Political Rights](#) (1966) prohibits discrimination on the basis of sex, and mandates states parties to “...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Article 2
- The [Convention of the Elimination of All Forms of Discrimination Against Women](#) (1979) not only requires states parties to ensure that the rights of women are protected, it explicitly states that they must take appropriate measures to modify or abolish discriminatory laws:

To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;...

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;...Article 2 (c) and (f)

- [General Recommendation 12](#) (1989), made by the Committee on the Elimination of Discrimination against Women (CEDAW) recommends that all parties to the Convention report to CEDAW on the legislation which is in force, statistical data on the incidence of violence against women, and on measures which have been adopted to eradicate the violence.
- In [General Recommendation 19](#), 1992, the Committee on the Elimination of Discrimination against Women recommended that:

States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence; 24 (c)

In 24 (v) the Committee stated:

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

- The United Nations [Declaration on the Elimination of Violence Against Women](#), (1993) (DEVAW) describes the duty of a state to monitor laws, recommending that states:

Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;...Article 4 (k)

Monitoring mechanisms

International mechanisms

Various international bodies have monitoring of laws as part of their mandate.

See: [International Standards on Domestic Violence and Their Implementation in the Western Balkans](#) (2006).

Selected examples are presented below:

Periodic Reports to the Committee to Eliminate All Forms of Violence against Women

- States parties to the [Convention on the Elimination of All Forms of Discrimination against Women](#) are required to submit periodic reports to the [Committee to Eliminate All Forms of Violence against Women](#). Based upon these reports and other information such as shadow reports by NGO coalitions, (see section on [Non-governmental mechanisms](#)) the Committee issues and publishes [Concluding Comments/ Observations](#) for each country, which include a summary of the current situation in the country and actions which have been taken since the last periodic report was made.
- The Committee also makes recommendations to the government of the country to improve its response to all aspects of discrimination against women, including violence against women and girls. The Committee requests that the information in its observations be widely disseminated in the country to government officials, parliamentarians, and women's organizations, among others, and that the State party respond to the concerns expressed in the concluding observations at the time of the next periodic report.
- The periodic reports are a powerful mechanism for international and internal review of country legislation and conditions on violence against women. The [United Nations Office of the High Commissioner of Human Rights](#) publishes all concluding observations in several languages.
- For example, recent Concluding observations have been issued for [Ukraine](#) and [Uzbekistan](#). The Ukraine report specifically addressed the issued of monitoring:

“...In addition, the Committee regrets the lack of information and sex-disaggregated statistical data regarding the types of violence against women and the number of female victims. (para. 26)

The Committee urges the State party to implement the Prevention of Domestic Violence Act (2001) effectively and to monitor its impact on women. It urges the State party to work towards a comprehensive approach to preventing and addressing all forms of violence against women, in conformity with general recommendation 19, and to improve its research and data collection on the prevalence, causes and consequences of violence against women and to include the results in its next periodic report...(para. 27)

See: [Concluding observations of the Committee on the Elimination of Discrimination against Women, Ukraine](#) (28 January 2010).

Reports by the Special Rapporteur on violence against women, its causes and consequences

The Special Rapporteur on violence against women, its causes and consequences, issues reports on this issue in various countries each year. The Special Rapporteur collects and analyzes data on violence against women in order to recommend measures to be taken at the international, regional and national level. The mandate of the Special Rapporteur has three elements:

1. Collection of information on violence against women and its causes and consequences from a variety of sources, including government and intergovernmental organizations, specialized agencies and non-governmental organizations;
2. Recommendation of measures at the international, regional and national levels to eliminate violence against women;
3. Cooperation with other special rapporteurs, working groups and experts of the Commission on Human Rights.

See: [UN Special Rapporteur on Violence against Women, Its Causes and Consequences](#), www.stopvaw.org.

For example, in [Mission to Tajikistan](#) (2009), the Special Rapporteur called upon the government of Tajikistan to prioritize statistics and data collection.

See: [15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences](#) (2009).

World Health Organization

The [World Health Organization](#) is the coordinating authority on health in the United Nations system. Its responsibilities include monitoring and assessing health trends.

Studies which monitor the prevalence of violence against women and girls can be important resources when monitoring the implementation of laws. For example, if few cases of domestic violence are reported to authorities, monitors can point to prevalence studies to support the idea that, in reality, there are many cases which are unreported and thus the law is not being implemented.

CASE STUDY: The WHO Multi-Country Study on Women's Health and Domestic Violence.

In 2005, the [World Health Organization](#) published the [WHO Multi-country Study on Women's Health and Domestic Violence against Women: Initial results on prevalence, health outcomes and women's responses](#). The study compared data from 24,000 women in 10 countries. It was the first to produce truly comparable data on physical and sexual abuse in various countries. The methodology consisted of household surveys in rural and urban locations. A research team was established in each country and advisory groups were formed to oversee the implementation of the study.

The study sought to estimate the prevalence of physical, sexual, and emotional violence against women. It placed a special emphasis upon intimate partner violence and its association with health outcomes. The study also sought to identify risk factors for intimate partner violence, how it could be prevented, and how survivors coped.

The WHO study contains extensive findings on these questions. Among them are: the prevalence of lifetime intimate partner violence ranged from 23%-49%; most women who were victims of physical abuse experience repeated acts of violence; and there was an association between recent health problems and a lifetime experience of violence, suggesting that the physical effects of violence are long-lasting or cumulative.

The study issued a number of recommendations for government action, including:

- Establish systems to collect data to monitor violence against women and the attitudes which perpetuate it.
- Make physical settings, including schools, safer for women and girls.
- Strengthen support systems for survivors of violence.
- Sensitize the justice system to the needs of these survivors.

Council of Europe

The [Council of Europe](#) consists of 47 member states. As part of its mandate under [Council of Europe Committee of Ministers Recommendation Rec \(2002\)5 on the protection of women against violence](#), it has assessed legislation on violence against women in many states. The Council of Europe recently conducted a monitoring study of the results of its Campaign to Stop Domestic Violence against Women. The [Final Activity Report: Council of Europe Task Force to Combat Violence against Women, including Domestic Violence](#) (2008), gave an overview and evaluation of measures to prevent and combat violence against women at the national and international level. It provided information on member states' efforts to criminalize violence against women, protect victims, and ensure the effective implementation of legal remedies for all forms of violence against women. It reviewed core support services developed by member states, data collection efforts, and new initiatives, providing examples from many countries.

European Union

- The [European Union](#), a political and economic partnership of 27 countries, has been the geographic focus of several monitoring studies:
- A 2009 report entitled [Violence in the EU Examined: Policies on Violence against Women, Children and Youth in 2004 EU Accession Countries](#) assessed violence in the ten countries that joined the European Union in 2004. The report analyzed violence against women, children, and youth as well as efforts to combat violence, particularly from legislative changes made after accession into the EU. The effect of EU recommendations on issues of human trafficking, gender-based violence, sexual harassment, pornography, and prostitution are examined.
- The report issued several recommendations on how to improve legislation on violence against women, children, and youth in the EU, based on analyses of legislation from the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.
- In 2009, a monitoring study entitled [Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries](#) focused on attrition rates, institutional barriers to effective prosecution, and recent legislative advancements in the European Union. The study is a follow-up to a 2003 report, [Rape: Still a forgotten issue](#), which examined the issue of attrition in reported rape cases and the lack of reliable statistics on rape in European countries. The 2009 study examined reporting rates for 26 European countries and contains a more in-depth analysis based on case studies from 11 western and central European countries.

Government mechanisms

Specific body to monitor legislation

- Legislation on violence against women should include a provision which creates a specific body to monitor the implementation of legislation on violence against women. This body should include members of parliament, national statistics offices, law enforcement administration and ministries for women and health. It should gather and analyze information on the implementation of the legislation, respond to parliament, and provide a public report of its efforts. The legislation should mandate adequate funding for regular review of the implementation of the legislation on violence against women.
- Some countries have included a requirement to monitor all laws on violence against women in their legislation. For example, Spain's [Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence](#) (2004) created two institutions responsible for monitoring the implementation and effectiveness of the law: the Special Government Delegation on Violence against Women and the [State Observatory on Violence against Women](#). Women's associations also play an important role in the State Observatory as members of this collegiate organization. The government also must provide a report to Parliament about the effectiveness of the law three years after it came into force. See: [Evaluacion de la Aplicacion de la Ley Organica 1/2004, de 28 de Diciembre, de Medidas de Proteccion Integral contra la Violencia de Genero \(2008\)](#).

Promising practice: In Spain, [The Observatory on Domestic Violence and Gender Violence](#), a part of the General Judiciary Council, monitors the judicial response to the implementation of the Organic Act 1/2004. The Observatory:

- a. Analyzes all sentences and resolutions related to gender violence;
- b. Has created an expert group composed by magistrates that proposes activities for the implementation and amendments of the law;
- c. Coordinates the on-going training of members of the judiciary, public prosecutor's office and civil servers of the general and specialized courts; and
- d. Supports studies and statistics focused on gender violence.

- The [Anti-Violence against Women and Their Children Act \(2004\)](#) of the Philippines established an Inter-Agency Council on Violence Against Women and Their Children and stated:

“These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.” Section 39

Case study: The Philippine Multi-sectoral Performance Standards and Assessment Tools for Services Addressing Violence Against Women

In 2008, the [National Commission on the Role of Filipino Women](#) (NCRFW), in cooperation with the Department of Justice, published [Performance Standards and Assessment Tools for Services Addressing Violence Against Women](#). The performance standards were mandated by Philippine's constitution and laws. The assessment toolkit is comprised of five volumes which address the capacity and compliance of investigatory services, medical or hospital-based services, psychological services, legal/prosecution services, and local anti-violence against women services using established performance standards.

A separate assessment toolkit was developed for each service area. Each toolkit contains detailed performance standards, an assessment tool matrix, and a baseline report. The performance standards were developed as a tool for direct service providers to respond effectively to cases of violence against women, as a monitoring tool to determine the level of compliance with national policies, and as an advocacy tool for protecting women's human rights. The assessments were intended to be completed by the agencies themselves, and to generate data on current compliance with the performance standards. The results will then be used for monitoring and evaluation purposes and as an aid in national prioritization and planning.

The performance standards for prosecutors include: the existence of a focal person or desk to give walk-in clients free legal assistance or referrals; the mandate to give priority to cases of violence against women and children; the requirement to enter the cases into a database; and an established protocol that prosecutors must follow when investigating cases, which includes informing the complainant that she can request a female prosecutor, referring her for possible health problems, handling cases as quickly as possible, and using one prosecutor throughout the proceedings, if possible.

Specific indicators in the prosecutorial assessment tool include:

- A prosecutor-client ratio is set to ensure that prosecutors can give sufficient time to all cases handled.
- Prosecutors have a minimum of 30 hours training on gender analysis and causes of VAW.
- Prosecutors ensure that the complainant is informed of her rights and legal procedures relevant to her case.
- Interviews are conducted in comfortable, private, and secure rooms.
- A gender-sensitive and trained counselor is present during the interviews to support the complainant/survivor.

Prosecutors must complete a detailed form to monitor compliance with these protocols and use a form for obtaining client feedback. The Department of Justice utilizes the data to evaluate prosecutor compliance and to create planning, policy and program interventions to meet the standards. The assessment is to be made at regular intervals of 3-4 years. Data is then reviewed and validated. Assessment results are discussed with the prosecutor agency, and action proposals to address identified gaps in service are prepared and discussed. Finally, a summary report is submitted to national and local interagency councils on violence against women and their children.

A baseline report on the first assessment follows the assessment tool. Among the findings: monitors noted that not all prosecutors have had training on managing VAW cases, nor have continuing trainings been scheduled as mandated by law. Separate rooms were not always available for interviews. The prosecutors interacted with other agencies only to the extent that the agencies were providing support to the investigation and prosecution, not in a victim-centered manner. The monitors also noted that the assessment data collection was unreliable. Importantly, VAW cases were not categorized as such, making long-term statistics on the volume of VAW cases unobtainable.

- Many other countries have included specific provisions which describe scope and responsibility for monitoring in their laws on domestic violence. For example, the [Maria da Penha Law \(Restrain Domestic and Family Violence Against Women\)](#) (2006) of Brazil states that prevention measures will utilize studies, research, statistics and other relevant information on the causes, consequences, and frequency of domestic violence to implement the systemization of data nationwide and the regular evaluation of the results of the measures. Article 8
- The [Domestic Violence Act](#) (1998) of Guyana states that the Director of Human Services in the Ministry of Labour, Human Services and Social Security shall be responsible for:
 - (b) studying, investigating and publishing reports on the domestic violence problem in Guyana, its manifestation and scope; the consequences and the options for confronting and eradicating it in conjunction with the Police Force and other agencies and organizations;...*
 - (e) developing strategies to encourage changes in the policies and procedures in government agencies in order to improve their response to the needs of the victims of domestic violence...Article 44*
- Governments may require a ministry or the national statistics office to conduct monitoring or they may appoint a Special Commission to monitor the laws. For example, Zimbabwe and Mozambique have created Women's Rights Commissions to monitor laws on violence against women. See: [Gender-Based Violence Laws in Sub-Saharan Africa](#) (2007), p. 79.
- The monitoring body should be independent of other government bodies. If it is not, it should provide for input from non-governmental organizations which have had experience in issues on violence against women.
See: [UN Handbook](#), 3.3.1; the [Anti-Violence against Women and Their Children Act](#) (2004) of the Philippines.
- One large intergovernmental organization which has monitored violence against women and girls is [The Organization for Security and Co-operation in Europe](#), which has 56 participating states. In June of 2009, the OSCE Mission to Bosnia and Herzegovina completed a monitoring study entitled [Trafficking in Human Beings and Responses of the Domestic Criminal Justice System: A Critical Review of Law and Emerging Practice in Bosnia and Herzegovina In Light of](#)

[Core International Standards](#). In July of 2009, the OSCE Mission to Bosnia and Herzegovina completed a monitoring report on the implementation of domestic violence laws:

Case study: [Response to Domestic Violence and Co-ordinated Victim Protection in the Federation of Bosnia and Herzegovina and the Republika Srpska: Preliminary Findings on the Implementation of the Laws on Protection from Domestic Violence \(2009\)](#)

In 2005, Bosnia and Herzegovina (BiH) and the Republika Srpska adopted Laws on Protection from Domestic Violence. Both laws contain protective measures for victims of domestic violence, such as removal of the perpetrator from the home, restraining orders, and prohibitions on stalking and harassment. In 2008 the Human Rights Department of the OSCE Mission to BiH conducted an assessment of the implementation of these laws.

The methodology for the assessment included roundtable discussions with practitioners and interviews with police, prosecutors, judges, and social welfare center professionals.

The monitoring report assessed the classification of domestic violence as a “minor offense,” protection measures, cooperation among officials and NGOs, police response, and data collection, among other topics. The monitors found that most justice system officials had not received training on the domestic violence law. They found that officials do not address victim protection under the domestic violence laws; instead, the perpetrators are often fined. The consequence is that victims remain unprotected and, as a family, are subject to a fine. Orders for protection were rarely issued, and the monitors found that police were concerned about alternative housing for the perpetrator as a prerequisite to issuance of the order, yet this was not a requirement under either law. Even when orders were issued, monitors found that they were rarely implemented. The most common measure ordered was referring the perpetrator to mandatory alcohol and drug treatment programs. Monitors noted that “It is concerning that [this] is the most frequently ordered measure, as this does not provide immediate relief and safety for victims.” p. 13

The monitors issued a number of conclusions and recommendations under each topic area. For example, in the area of police response, monitors had noted that police often delayed taking a victim’s statement, and utilized few evidence-gathering techniques. Thus, the monitors recommended that police establish guidelines and policies to thoroughly document domestic violence incidents. Finally, specific recommendations were issued to key government agencies, ministries and justice system professionals.

- In another example, [The Nature and Extent of Human Trafficking in Northern Ireland: A Scoping Study](#) (2009) assessed the scope of human trafficking in Northern Ireland and recommended that the Northern Ireland government begin a wide-scale consultation with non-governmental organizations on data collection and availability.
- The [Violence in the Family Prevention and Protection of Victims Laws](#) (2004) of Cyprus established an Advisory Committee for the prevention and combating of violence in the family. The Committee is charged to:
 - (a) *Monitor the problem of violence in the family in Cyprus;...*
 - (c) *promote scientific research in relation to violence in the family;...[and]*
 - (d) *monitor the effectiveness of the related services in operation and the application of and compliance with, the relevant legislation.* Article 7
- In other examples, the [Law on Access of Women to a Life Free of Violence](#) (2007) of Mexico mandates the creation of a national databank on cases of violence against women. [The Law on Measures against Violence in Family Relations](#) (2006) of Albania mandates the Ministry on Labour, Social Affairs, and Equal Opportunities to “maintain statistical data on the level of domestic violence.” [The Law against Femicide and other Forms of Violence against Women](#) (2008) of Guatemala requires the national statistical office to compile data and develop indicators on violence against women.
- In 2008, [AusAID](#), the Australian government’s overseas aid program, published [Violence Against Women in Melanesia and East Timor](#) a regional assessment evaluating the effectiveness of current approaches to addressing violence against women in the areas of Melanesia and East Timor. In addition to an overall regional summary and evaluation, the report also contains country-specific reports and recommendations for five of Australia’s close partner countries: Fiji, Papua New Guinea, Solomon Islands, Vanuatu, and East Timor. Promising practices in the area are also highlighted. The report identifies area practices which have significantly contributed to the low status of women in this region, including bride prices, economic dependence and prioritization of male interests in traditional cultures. Multi-sectoral solutions are also recommended including increasing women’s access to justice, increasing women’s access to support services, and preventing violence through awareness campaigns directed at changing community attitudes.

Non-governmental mechanisms

- Non-governmental organizations (NGOs) all over the world have created monitoring reports on different aspects of violence against women and girls.
- NGOs may form coalitions or partnerships to monitor violence against women. For example, The [Asia Pacific Forum on Women, Law and Development](#) has, in partnership with other NGOs, developed research, analysis and responses on violence against women in the region, and provided a forum for networks and consultations for NGOs to coordinate and share information with the UN Special Rapporteur on violence against women. See: [Specific Indicator Initiatives and Issues in the ESCAP Region Related to the Measurement of Violence against Women](#) (2007).
- NGO coalitions often write Shadow Reports which are submitted to the [Committee to Eliminate All Forms of Violence against Women](#) (CEDAW). Shadow reports are intended to accompany a government's report, and to give another viewpoint of the situation in the country. For example, see: the [Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women in Ukraine](#) (2008) and [The Alternative Report of Evaluation regarding the implementation of Convention on the Elimination of All Forms of Discrimination Against Women](#) (2006), Moldova.
- A recent monitoring report, [Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform](#) (2010), cited important contributions of a shadow report to CEDAW authored by civil society: It noted that special women's police stations existed in only 10% of Brazilian municipalities in 2007, and that insufficient funding and lack of police training have limited the capacity of the women's police stations to investigate crimes of violence against women. See: [Brazil and Compliance with CEDAW](#) (2007).
- In Serbia, NGOs conducted an independent monitoring study on the implementation of the recommendations made by CEDAW to Serbia's Initial Report to the Committee in 2007. The report, [A Summary Presentation of Analysis Findings and Recommendations](#) (2009), called on the government to collect information on the types and frequency of domestic violence committed as well as perpetrator and victim characteristics. Additionally, the NGOs called on the government to provide public services with systematic training on how to interact with domestic violence survivors, and to collect data monitoring public employees' compliance with that training.
- NGOs have monitored many different aspects and types of legislation on violence against women and girls. For example, a 2009 NGO monitoring report entitled [Asia: Mind the Gaps: A Comparative Analysis of ASEAN Legal Responses to Child-Sex Tourism](#) examined the implementation of international treaties and existing laws of member states of the [Association of South East Asian Nations](#) (ASEAN) regarding child-sex tourism. The report, the first regionally comparative analysis on child-sex tourism, was compiled at the

request of ASEAN national governments and sought to support NGOs, law enforcement officials, academics, international agencies, and governments combating child-sex tourism.

- [Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices](#) (2009), written by the Lawyers Collective Women's Rights Initiative of India, provides both an analysis of legislation at the regional level and an overview of global good practices on domestic violence response systems.
- NGO reports can play a key role in policy development on violence against women and girls and in bringing about legislative change.

Case study: International Center for Reproductive Health's comparative analysis of implementation of laws on FGM in five European countries contributes to policy development at national and international level

In 2003-2004, the [International Centre for Reproductive Health](#) coordinated a monitoring study on the difficulties of implementing legal provisions related to female genital mutilation (FGM) in European countries, in order to find out why, despite the fact that specific laws on FGM exist, few cases reached courts in Europe.

The study analyzed the implementation of laws and barriers to their implementation in Belgium, Sweden, Spain, United Kingdom, and France. The monitors assessed the following:

- presence of criminal law provisions on FGM
- existence of FGM practices in local communities
- reporting of cases
- investigations of reported cases
- court cases on FGM

Field work, consisting of document analysis and case study, was performed by local partners. A comparative analysis of the data from all five countries was performed. See: International Center for Reproductive Health (ICRH), [Assessing the impact of legislation in Europe with regard to female genital mutilation](#) (2004).

The monitoring project identified factors that were obstructing the implementation of laws on FGM, and provided recommendations for better implementation, including recommendations for improved training of professionals and for cooperation among sectors. Importantly, it contributed to policy development at the national level in Belgium and at the [European Union](#) (Resolution A5-0285/2001, which referenced the work of ICRH).

- In its [2009 State-by-State Teen Dating Violence Report Card](#), the United States NGO [Break the Cycle](#) evaluated states in the U.S. based on the measures in place to protect victims of teen dating violence.

- According to the evaluation, five states received "A" grades (California, Illinois, Minnesota, New Hampshire and Oklahoma) and fourteen states received "B" grades. A factor in the grading was access to protection or restraining orders. Only nine states allow minors to obtain protection or restraining orders without a parent or guardian, if certain conditions are met. Ten states automatically failed the review because they do not recognize dating relationships for the purposes of obtaining protection or restraining orders, and do not allow minors to obtain this type of protection. According to Break the Cycle, these obstacles can make it very difficult for teen victims of domestic violence to secure the help they need.
- For descriptions of other projects and reports which have collected data on violence against women and monitored the legal system using various methods, see: [Bringing Security Home: A Compilation of Good Practices](#) (2009) by the OSCE Gender Section.

Case study: *Africa for Women's Rights: Ratify and Respect! Dossier of Claims*

[Africa for Women's Rights: Ratify and Respect! Dossier of Claims](#) (2010) summarizes the statutory laws, customary laws, traditions, and practices on women's human rights in over thirty African countries. It was written by national human rights and women's organizations in Africa who are partner organizations in the [Campaign "Africa for Women's Rights: Ratify and Respect!"](#) initiated by the Fédération Internationale des ligues des Droits de l'Homme ([FIDH](#)) in collaboration with regional organizations.

Each country chapter begins with an accounting of the women's human rights documents which have been ratified by the country. Positive legal developments which have occurred in recent years are described in detail, as are laws and practices which perpetuate discrimination and violence against women and girls. Subject areas which are emphasized include violence, discrimination in the family such as marriage laws and inheritance practices, and other barriers to justice, such as lack of access to education, health, employment, political participation, and freedom of movement.

For example, in the chapter on Cameroon, the authors note that although civil laws exist on the minimum age for marriage, customs and traditions have caused forced and child marriage to be widespread. The chapter on Democratic Republic of Congo takes note of the adoption of two laws against sexual violence but states that sexual violence is still practiced with impunity, even in relatively stable areas. The chapter on Niger describes the cumulative effect of discriminatory statutes, customary and religious laws. Each chapter contains a number of recommendations of specific measures for the government which address these discriminatory laws and practices. Finally, the document calls upon all African states to "ratify international and regional instruments protecting women's rights, to repeal all discriminatory laws, to adopt laws protecting the rights of women and to take all necessary measures to ensure their effective implementation."

This description of existing laws and practice followed by sharp notation of reality on-the-ground is an example of a powerful kind of monitoring study.

Human rights organizations

Human rights organizations such as [The Advocates for Human Rights](#), [Amnesty International](#), and [Human Rights Watch](#) monitor the implementation of laws on violence against women by researching and writing reports on the government response to violence against women and girls in countries all over the world. They establish the prevalence of an issue and analyze the government's compliance with international human rights standards around the issue. They study the responses of the legal, medical and social service providers. They determine if the government has met its duty to prosecute perpetrators of violence and to provide safety for victims. They also issue recommendations for governments and all major stakeholders on relevant issues, including training and funding allocation.

For example, in 2008 The Advocates for Human Rights published [Domestic Violence in Tajikistan](#). In March of 2010, Amnesty International published [Case Closed: Rape and Human Rights in the Nordic Countries Summary Report](#). In December, 2009, Human Rights Watch published [We Have the Promises of the World: Women's Rights in Afghanistan](#).

For more human rights reports from these organizations, visit their websites and search under Publications or Library.

Case Study: Monitoring the Implementation of the Bulgarian Law on Domestic Violence

In 2008, [The Advocates for Human Rights](#) and the [Bulgarian Gender Research Foundation](#) published [Implementation of the Bulgarian Law on Protection against Domestic Violence](#). The monitors conducted interviews of all principals involved in implementation of Bulgaria's [Protection against Domestic Violence Act](#) (2005), (LPADV) including government ministry officials, police, judges, prosecutors, women's organizations, and the media. Monitors described the policies promulgated by various government ministries, and noted deficiencies in funding for state obligations, such as sufficient numbers of shelters for victims of domestic violence. Monitors found that the use of the order for protection authorized by the LPADV was increasing, and that it was generally supported by the Bulgarian legal community. The monitors also noted procedural and substantive issues that were limiting the full implementation of the LPADV, such as a short time frame (30 days from the last act of violence) in which the victim must file for an order for protection (p. 29), and judges who did not fully utilize their authority under the LPADV to protect the victim. p.34

The study concluded that implementation of the LPADV, in the two years since its passage, had been generally positive, but that challenges remained, including the need for amendment to criminalize violations of orders for protection [This [amendment](#) was passed in 2009] and to allow state prosecution of low and medium-level assaults when victim and perpetrator are related. The monitors issued a number of recommendations to all principals, including priority recommendations to the Bulgarian government that it make a clear financial commitment to meeting the objectives set forth in the LPADV and that it provide adequate and consistent funding to Bulgarian NGOs, which are providing many services to domestic violence victims. p. 51-53 See: [CASE STUDY: Bulgarian NGOs work to get funding for domestic violence law implementation](#), in [Domestic Violence](#).

Case study: [Breaking the Silence: Sexual Violence in Cambodia](#)

In 2010, [Amnesty International](#) (AI) issued [Breaking the Silence: Sexual Violence in Cambodia](#). The report was based on interviews with female victims of rape, service providers, government officials, law enforcement agents, and lawyers in several Cambodian provinces. It called on the Cambodian government to meet its obligations under the [Convention on the Elimination of All Forms of Discrimination against Women](#), the [Convention on the Rights of the Child](#) and other international human rights instruments Cambodia has ratified. The report identified several barriers faced by rape victims who sought justice, including:

- societal norms that subordinate women and place a high premium on female virginity;
- poverty, which hampers victims' ability to cover costs for transport to health clinics, police and courts and reduces their access to justice because of inability to pay bribes to police and court officials;
- delays and lack of thoroughness in police investigations;
- fear of retaliation by the perpetrator, particularly in cases where police officers raped sex workers;
- police facilitation of out-of-court monetary settlements between the families of the perpetrator and the victim, on the condition that the victim withdraw the criminal complaint;
- lack of government social services for rape victims;
- lack of coordination between NGOs providing social services to rape victims; and
- lack of services for victims with disabilities and special needs;

Cambodia's new Penal Code, which clarifies and expands the definition of rape and sets a minimum age of consent, will come into effect in 2010. AI recommended that the Cambodian government address inadequate law enforcement, and improve rape victims' access to services.

Case study: [Guatemala's Femicide Law: Progress Against Impunity?](#)

In 2009, a year after the Guatemalan government passed the [Law Against Femicide and Other Forms of Violence Against Women](#) (2008), the [Guatemalan Human Rights Commission](#) (GHRC), a non-profit organization based in Washington D.C., U.S.A., published a monitoring report entitled [Guatemala's Femicide Law: Progress Against Impunity?](#) The GHRC reported that the femicide law "represents an important step in challenging the history of gender violence and rampant impunity," but has yet to stem the rising tide of murders. The report noted that the government has made progress in implementing some aspects of the femicide law, including the first conviction in February, 2009. The report found that a lack of understanding of the law, continued social unrest, and inadequate efforts to implement the law impede serious progress in implementation. The GHRC stated that the violence must be framed within the context of human rights for all Guatemalans. It recommended that the government of Guatemala improve investigation and prosecution of crimes of violence against women, improve protection of the victims of violence and their children, increase education of both the professionals responsible for responding to such crimes and the public, and develop a coordinated approach to healing for families.

How to monitor the implementation of laws on violence against women and girls

- Monitoring the implementation of laws on violence against women and girls is done by measuring the government's response to the violence, both in terms of action and inaction by the government. The government's compliance with international standards and with the laws of the state should be documented and analyzed. The response of law enforcement, the legal community, the judiciary, and medical and social service agencies should be documented and analyzed. Monitors should also analyze public awareness and opinion regarding the violence and the law.
- Monitoring is accomplished by obtaining and analyzing quantitative and qualitative data, using indicators of gender-based acts of physical, sexual, or psychological violence against women and girls.

Indicators utilized in monitoring

- Indicators on violence against women measure the scope, incidence and prevalence of violence against women.
- Indicators must also address the effectiveness of measures undertaken to address violence against women." See: [Indicators to measure violence against women](#).
- Indicators provide information about a specific issue and enable comparisons to be made over time and in different locations. For example, "the number of women (over the total number of women) who have requested an order for protection under the domestic violence law in 2009 in X country" is one indicator. This indicator might be used to draw conclusions about prevalence, public awareness of the law, or the attitude of the police.
- Indicators on violence against women should be valid, reliable, specific, measurable, time-framed, comparable across country borders, and non-directional in their approach. See: [Indicators on violence against women and state response](#).
For example, "the percentage of women (over the total number of women) who have experience rape/sexual assault during the last year" is an indicator of prevalence of sexual assault/rape. Indicators should be so clearly defined that they cannot be interpreted in more than one way.
- Indicators should be disaggregated by age, severity of incident, relationship with perpetrator, frequency, and other relevant criteria such as disability or ethnic group. For example, the indicator in the example above should be disaggregated by severity (moderate/severe); perpetrator (intimate/other relative/other known person/stranger/state authority; and frequency (one/few/many times). See: [Indicators to measure violence against women](#).
- Indicators must also measure the consequences of violence against women. Consequences can be measured by severity, such as frequency of attack, or seriousness of injury. See: [Indicators to measure violence against women](#).
- Indicators should be selected after considering the availability of sources, the feasibility of attaining data, and the likelihood that the collection of data can be sustained over a period of time. See: [Indicators to measure violence against women](#).

Special factors regarding indicators of violence against women

- Indicators must reflect human rights principles and be based upon internationally accepted definitions of types of violence against women. If indicators are open to misinterpretation, results could be spurious. See: [Indicators on violence against women and state response](#).
- Indicators must accurately reflect patterns of violence against women by addressing the number of violence incidents, and the consequences that occurred.
- Indicators of the number of incidents should be measured by using two time periods: over a lifetime, and over a recent period, such as within the last year. Lifetime statistics are vital for the forms of violence against women that are likely to occur only once in a lifetime, such as FGM or maltreatment of widows.
- The same indicators should be used nationwide to describe the different types of violence against women, in order that the results may prove comparable over the state. See: [Indicators to measure violence against women](#), by the United Nations Expert Group. The Expert Group proposed an international framework for indicators on p. 19 of the report.
- If countries do not have accurate census data or voting registration, or lack high rates of telephone ownership (all methods of systematically locating survey respondents), it is best to randomly sample one urban area and one rural area. See: [The World Health Organization's Multi-Country Study on Women's Health and Domestic Violence against Women](#).
- Where large-scale surveys are not feasible, states can add modules to ongoing demographic, health, or crime victim surveys, and states can strengthen the collection of administrative data. States can require their criminal justice system to disaggregate law enforcement and crime data to enhance its usefulness in tracking violence against women. States should develop indicators which are regionally-relevant for state statistics offices to use. For example, in states where stove burning is common, indicators must be added on this issue. See: [Indicators to measure violence against women](#), p. 28-32.

(See: [Violence Against Women and Girls: A Compendium of Monitoring and Evaluation Indicators](#); [The Next Step: Developing Transnational Indicators on Violence Against Women](#); and [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#).)

- For example, the [Demographic and Health Survey](#) (DHS) program [MEASURE DHS](#) began to collect information on the prevalence of domestic violence against women in the early 1990s and has developed a standard domestic violence module of questions. Although this module is typically used to obtain information from women on their experience of violence, a few countries have recently used it to obtain information on violence against men.

- The [DHS Domestic Violence Module](#) collects information on the following indicators:
 - Experience of physical violence since age 15
 - Forced first sex
 - Experience of sexual violence ever
 - Violence during any pregnancy
 - Experience of emotional, physical, or sexual violence by current (or most recent) husband
 - Frequency of spousal violence
 - Timing of initiation of spousal violence
 - Violence by women against their husband
 - Whether and from whom help was sought

- Today, comparable information on the prevalence of domestic violence against women is available in well over 25 countries.

Recommended indicators for monitoring the government response to violence against women and girls

Monitors should utilize the following indicators developed by the Special Rapporteur in 2008 to monitor the government response to violence against women and girls:

- Ratification of the Convention on the Elimination of Discrimination against Women and other human rights instruments.
- Constitutional guarantees of women's equality and repeal of discriminatory laws.
- A plan of action/executive policy on violence against women with a strong evidence base and political will for its implementation, demonstrated by budgetary allocation, timelines and clear paths of responsibility.
- An effective legal framework, statute and procedural law that provides access to justice, redress, protection and compensation.
- Criminalization of all forms of violence against women and the prosecution of its perpetrators.
- Increased awareness and sensitivity of professionals and officials.
- Resource allocation to ensure provision of support and advocacy services by NGOs, including shelters, helplines, advocacy, counseling and other services.
- Awareness-raising and prevention programmes.
- Addressing structural inequalities in the promotion of women's advancement
- Collection, collation and publication of data, including evaluation of policies and basic research programmes.

From: [Indicators on violence against women and state response](#), page 19.

These indicators should be reflected in the methodology designed by the research team. Questions should be developed which reflect each of these areas. See: Section on [sample methodology](#).

Quantitative data on violence against women and girls

- Reliable statistics on the prevalence, causes, and consequences of all types of violence against women and girls are essential to developing effective legislation, to advocate for the legislation, and to develop strategies and protocols for the implementation of the legislation. See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#).
- For example, UNDP Albania, UNICEF and UNDP Small Arms Project supported the Albanian Institute of Statistics in conducting a national domestic violence survey in Albania. The survey report, [Domestic Violence in Albania: A national population-based survey](#) was published in March of 2009. The goal of this significant project was to establish national baseline data on domestic violence in Albania. It is the first of its kind ever done in Albania.
- Statistical data should be obtained at regular intervals.
- Quantitative data can also be obtained by measuring indicators of government response and program performance. This research should include measures on numbers of prosecutions, convictions, denials of prosecutions, orders for protection issued, and re-offense data.
- Quantitative data can also be obtained by coding qualitative data into measurable units. This can help to describe and summarize large qualitative data such as hundreds of interviews. See sections on [Qualitative data](#) and [Analyzing data from interviews](#).

- Data should be disaggregated by sex, race, age, ethnicity, relationship between perpetrator and victim, and other relevant characteristics. Government offices should be required to compile and analyze this data. See: [UN Handbook](#), 3.3.2.

For example, the county of Kazakhstan has created an automated databank in the Department of Public Safety of the [Ministry of Internal Affairs](#), which allows the government to obtain data on the age of the victim, the consequences of the violence, and the criminal disposition of the case, among other factors.

- Governments should sponsor or create a baseline study on the relevant issue of violence against women and girls as a reference point for future studies.

For example, the [Baseline Survey on Domestic Violence and HIV](#) (2008) conducted by the [Centre for Media Studies](#) and [Breakthrough](#) of India anchored a three-year campaign to combat domestic violence and discrimination against women with HIV/AIDS. The study created benchmarks on existing knowledge, attitude and practice about domestic violence, HIV/AIDS, and [the Protection of Women from Domestic Violence Act \(2005\) of India](#), and on attitudes on inter-spousal communication, condom use and negotiation, and sources of information about these issues.

- The [UNFPA](#) and the [National Statistical Service of Armenia](#) implemented a quantitative survey to collect data on gender-based violence in 2008-2009, in response to the need for official data on violence against women and girls, so that the importance of addressing the problem could be substantiated. They

sought to create an official baseline for policy makers in Armenia to utilize in the formation of policies and programmes to reduce gender-based violence. Survey administrators collected representative information at the Marz, or regional level in Armenia. (There are 11 marzes in Armenia.) Using the database of addresses from the 2001 population census, field workers visited nearly 5000 households and administered questionnaires on gender-based violence. Data was coded and entered into a computerized database. A working group, consisting of Ministry officials, police, and members of civil society, led by a sociologist and gender expert, was created to analyze the data. The survey is made available at: <http://www.genderbasedviolence.am/en/content/show/13/quantitative-research.html>.

Qualitative data on violence against women and girls

Qualitative data is data that goes beyond statistics. It is data from interviews, descriptions, case studies, and observations. The [United Nations Secretary-General's in-depth study on all forms of violence against women](#) (2006) stated "Qualitative methods are necessary to complement quantitative surveys, for example to understand the complexities and nuances of experiences from the respondent's point of view...qualitative research findings are useful in assessing women's needs and constraints, community needs, designing prevention campaigns, planning and evaluating interventions and engaging community actors via participatory research." Sec. 217

Qualitative data can be obtained by a number of methods:

- Interviews with survivors, advocates, attorneys, police, prosecutors, judges, probation officers, health professionals, and social service providers.
- Focus groups, such as groups of service providers. For more on focus groups, see: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), Chapter Nine.

For example, the [Ukrainian NGO Progressive Women](#) held a focus group with survivors of domestic violence, asking them "In your view, what would be the perfect resolution of domestic violence by the state?" The NGO reported that victims had creative ideas: the emergency number should be 2 or 3 digits that are closely spaced on a telephone so that the buttons are easy to push in a stressful situation; a male and female police officer team should arrive within 15 minutes; victims should be questioned in a room away from the perpetrator; specialized courts should consider the case; penalties should include community service and a stay in a special "Center for Rehabilitation of the Offenders;" and social services should offer victim support for many months. Importantly, victims wanted domestic violence to be classified as a criminal offense, so that responsibility for collecting evidence would be transferred from the woman to the state.

- Participant observation, wherein a researcher sits in a group setting in order to gain firsthand knowledge, such as observing a victim support group. This is a good way to discover differences between what should happen and what actually does happen in implementation of the law.

For example, in [Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform](#) (2010), the researcher observing a focus group noted that victims felt a sense of hopelessness and lack of judicial protection because of the government's ineffective actions in domestic violence cases. One victim asked "how she would explain to her children that it was morally wrongful to batter when there was no judicial authority to support this message." p. 88

- For example, when activists in Ukraine investigated the question of why women did not report violence to the police, they accompanied police patrols on domestic violence cases, interviewed victims, and observed trials. They observed first hand the delay that victims experience when they call the police, and that the sanction most often given was a fine, which, since it came from the family budget, worsened the financial situation of the victim. They observed that the perpetrator, detained for only 12 hours, continued to live with the victim in most cases. They observed that regular physicians did not want to do the paperwork to document injuries, and that forensic doctors may examine a women only by police request, and the procedure to obtain this request is very difficult. *From: [Ukrainian NGO Progressive Women](#).*
- Surveys
For an example of a qualitative survey on domestic violence, see: [Security Begins at Home: Research to Inform the First National Strategy and Action Plan against Domestic Violence in Kosovo](#) (2008), Appendix 2.
- A search of court records (See section on [Monitoring court records](#), below).
- Observation of court processes (See section on [Court monitoring](#), below).
- Media reports
[Gender-Based Violence In Tanzania: An Assessment of Policies, Services, and Promising Interventions](#) (2008) is an example of a qualitative monitoring report. Methods used included key informant interviews and focus group discussions. In this report, monitors found that women and girls are frequently blamed for causing or provoking gender-based violence, and that victims rarely report the violence to law enforcement, seek treatment, or visit support services. The assessment also describes gaps in Tanzanian legislation and in capacity of service providers. Promising interventions are also noted in the report.

Sources of data on violence against women

Data may be obtained from surveys, administrative statistics, or criminal statistics:

- Data may be obtained by a dedicated survey which asks questions only on violence against women. Dedicated surveys will result in more extensive data on violence against women but are more expensive to administer and costly to repeat regularly.
- Data may also be obtained by a survey on a broader topic, such as health, which includes a section on violence against women. For example, one survey on crime in England incorporated questions on violence in the home. See: [Safety and Security: A Proposal for Internationally Comparable Indicators of Violence](#) (2008). The [National Family Health Survey Report of India \(2005\)](#) also incorporated questions on the percentage of women who have experience domestic violence in intimate partner relationships.
- National statistics offices are important sources of data on violence against women. These offices may administer surveys and they may collect data from the criminal justice system.
- Data can also be obtained from relevant administrative sources. Administrative sources include health providers, the criminal justice system, social service providers, public housing providers and others. However, these administrative sources may pose challenges to developing a comprehensive picture for several reasons, including:
 1. They only capture data from those who report the abuse they have experienced, and the majority of women and girls do not report the abuse therefore data that exists is a gross underestimation of reality.
 2. The data is not disaggregated by gender, age, or relationship.
 3. Streamlining the data collection across the nation is challenging as is ensuring consistency in the execution of data collection.

Data should be collected according to [United Nations Principles of Official Statistics](#).

For more information on survey methodology, see: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#) (2005).

Combining quantitative and qualitative monitoring

- When monitoring legislation on violence against women and girls, it is most effective to utilize a combination of qualitative and quantitative monitoring. Quantitative data on the number of complaints and cases of domestic violence which reach the court system is more meaningful when combined with qualitative data such as interviews with advocates or survivors who have had experience with barriers to court access which survivors experience. Utilizing both methods of research allows a researcher to identify inconsistencies and truths which may not be immediately evident when only one type of data is employed.

- This type of monitoring requires a “situation analysis” which describes multiple factors around the issue of violence, including: specifics of the law; interviewees’ reports of experiences of victims of violence; and the government response to the violence. The report should evaluate the adequacy of the government response in attaining victim safety and offender accountability, and make recommendations to all stakeholders.
See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#) (2005), Chapter Three.
- For example, the [Baseline Survey on Sexual and Gender Based Violence in Rwanda](#) (2008) combined quantitative data on sexual and physical violence with qualitative data that examined the effects on survivors and evaluated stakeholder actions to address and prevent gender-based violence.

Designing a qualitative research project or a “situation analysis”

- The first step in designing a qualitative research project is to form a general research question. For example: Is the government’s response to violence against women and girls meeting its human rights obligations?
- The second step is to outline the key concepts relating to the research question. Key concepts for the question stated above would be: What are the human rights obligations of a state? What are women’s human rights? What is the government’s response to victims of violence against women and girls?
- The third step is to find meaningful, valid, and reliable indicators for measuring the concepts, or determining how to measure the human rights violations faced by victims of violence against women and girls. Human rights violations can be measured both *positively* (e.g. legislation, policies, resources, the work of victim service organizations) and *negatively* (e.g. the actual incidences).
- After deciding the concepts to be analyzed and their related indicators, it is necessary to decide on the context of the research. It is important to adapt the monitoring project to the monitor’s resources (time, money, staff, expertise...). As a general rule, it is better to provide comprehensive and well researched information on a limited phenomenon in a limited area, than to try to say something about everything and to fail to get beneath the surface.
- After deciding *what* information to collect and *where* to collect it, monitors must decide *how* to collect it. There are many ways to collect data in a qualitative research project, and monitors should use more than one approach. For example, by interviewing police and service providers, monitors can obtain information on policies and programs that exist, and also on attitudes towards victims of violence and the barriers victims may encounter. For specific examples of questions see [Sample methodology to monitor the government’s response to legislation on violence against women and girls](#).

- Monitors can obtain information on attitudes, policies, and barriers to implementation by reviewing court records or proceedings. See sections on [Monitoring court records](#) and [Court monitoring](#). Monitors can also acquire first-hand knowledge of policies and programs by taking part in the daily life of a shelter, or obtain information on attitudes on victims through newspaper analysis. Even if all the different elements do not end up in the final monitoring report, exposure to them will enable monitors to grasp a complex phenomenon.

Adapted from: Marshall and Rossman, [Designing Qualitative Research](#), (2006).

CASE STUDY: The Multi-Year Monitoring Project of The Lawyers Collective Women's Rights Initiative, in collaboration with The International Center for Research on Women, on the Implementation of the PWDVA in India.

The [Lawyers Collective Women's Rights Initiative](#), in collaboration with [The International Center for Research on Women](#), completed three Monitoring and Evaluations Reports on the implementation of the [Protection of Women from Domestic Violence Act \(2005\)](#) (PWDVA) of India. The overarching goal of the reports was to discern whether or not the PWDVA succeeded in protecting the human rights of women victims of violence.

The [first report](#) was issued in 2007. LCRWI gathered quantitative and qualitative data on infrastructure and implementation from court filings and orders. They determined the number of Protection Officers appointed and the number of service providers, shelters and medical facilities which had registered under the PWDVA as service providers for women victims of violence. (The PWDVA is gender-specific.) Among the key findings were:

1. A total of 7,913 applications have been filed under the PWDVA in the period ending 31 July 2007 (first nine months). Most of these proceedings are pending in court.
2. The primary users of the law are married women. There are also a number of cases wherein reliefs have been granted to widows and daughters.
3. The most common form of relief granted was maintenance, followed by protection and residence orders.
4. There was a clear need for coordination among government departments to adopt and maintain a multi-agency response.
5. Protection officers needed adequate support and training.
6. The PWDVA itself need adequate government funding for full implementation.

The second report, [Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act 2005](#), was published in 2008. The LCRWI utilized a combination of qualitative and quantitative data in this report as well, utilizing questionnaires and field visits. They gathered more extensive data from the government ministries of 27 states of India. For instance, not only did they study the number, qualifications, and roles of Protection Officers and service providers, but for 20 states they developed interview templates to determine how they functioned and whether or not they were aiding women's access to justice. For example, Protection Officers were asked if they recorded a Domestic Incidence Report. By their replies, the monitors were able to draw conclusions on misunderstandings about the PWDVA and about the expansion of Protection Officer roles in a way the law did not envisage (home visits and counseling). They organized a meeting which was attended by Representatives of the nodal Department of every state who then completed questionnaires and presented information on best practices and challenges they were facing in implementing the law.

The monitors analyzed specific aspects of the evolving implementation of the law. It monitored the background of service providers and their specific implementation programs. For example, one state used "Special Cells," or specially trained social workers, in police stations for victims of violence. The LCRWI determined that the role of the "Special Cell" was a "catalyst" for the implementation of the law, coordinating with police, Protection Officers, and shelters, and providing trainings for police and women's groups. The LCRWI also analyzed the evolving jurisprudence on the PWDVA. Among the key findings of this report were:

1. Protection officers have been appointed at the district level in all states. Ten states have appointed Protection Officers at the sub-district level.
2. Funding for the implementation of the law remained inadequate. 13 of the 27 states in the study had allocated specific budgets for the law, but funding remained too low.
3. One state, Andhra Pradesh, allocated more funding and offered a supportive infrastructure, including training and awareness programs and coordination among stakeholders. For more on this state's actions, see the [Case study "Andhra Pradesh"](#) in [Implementation of Laws](#).

The second report found that there were still no standard models or protocols for implementing the law. This report concentrated on data from Protection Officers, and provided convincing evidence of the evolution of those officers into effective implementers of the letter and spirit of the PWDVA. It found that more cases were filed than in the previous year, supporting the idea of increased public awareness.

The [Third Monitoring & Evaluation Report 2009 on the Protection of Women from Domestic Violence Act, 2005](#) (2009) found that increasing numbers of cases were filed under the act. However, the courts were not responding with the speed necessary to protect a victim in need of protection, and were "hesitant to grant *ex-parte* orders even when the circumstances so demand..." p. iii.

In this report, the LCWRI and the International Center on Research on Women examined the knowledge, attitudes and practices around the law among police, protection officers, judges and other key stakeholders. They used this information to identify possible barriers to the law's implementation. Utilizing a combination of quantitative and qualitative data from multiple data sources, they also asked key questions about women's experiences in using the law at different stages of litigation, and the factors which impede or facilitate the implementation of the law by the various stakeholders. They studied court orders and judgments. The LCWRI conducted training sessions with the police, judiciary and protection officers and collected data on their knowledge, attitudes and practice both before and after the training sessions.

Again, the monitoring study yielded a wealth of information. They found that a substantial proportion of the judiciary still believed that the welfare of the family should come before that of the woman, and that they were counseling women with the goal of preserving the family above that of safety of the woman. They found that police were confused about some of the provisions of the law.

The monitors used training sessions to achieve both training and monitoring. They noted that valuable information on the trainees' implementation of the law can be obtained, and training on misperceptions can commence immediately. In a receptive atmosphere and with the support of their peers, interviewees may in fact reveal more about what they are really doing than in a more formal interview setting. The monitors noted that interactive trainings on a regular basis that explicitly address perceptions and attitudes are good practice.

The LCWRI collected data by completion and submission of questionnaires by state departments at a pre-Conference meeting. However, only one of the departments collected national level data, and data was not available from all of the stakeholders. Some states did not return data on some issues despite persistent requests. The monitors rightly concluded that this highlighted the need for a uniform system to collate and record data on cases filed under the PWDVA.

The third monitoring study found that in some states, women weren't using the Protection Officers. In other states, Protection Officers were overworked. Creative solutions to problems encountered with implementation of the law were noted: the High Court in Andhra Pradesh set a special time for cases to be heard under the PWDVA to facilitate the schedules of the Officers. A general trend of women's reluctance to use shelter homes nationwide was noted.

The third report made note of progress that has occurred since the first two monitoring reports: At the time of the first one, only the state of Andhra Pradesh had begun to implement effective coordination between government ministries which are required to address issues under the PWDVA. By the second, two more states had appointed Coordination Committees. At the time of the third monitoring report, a number of states had Coordination Committees, some of which were engaged in collecting data and submitting recommendations for the implementation of the PWDVA. Other states were using existing structures and adding coordination duties to their functions. The monitors presented detailed case studies on the implementation of the law in 2 states: Andhra Pradesh and Kerala.

Funding was still an important issue in the third monitoring report. Monitors noted that Protection Officers, a key part implementing the PWDVA, often try to combine this duty with other duties as Child Protection Officers, and also are not available on nights or holidays. The monitors concluded that independent, funded positions are vital to victim access. Other issues, such as the distinction between rights of ownership in a home and the right to reside there, and whether or not respondents could be females, continue to be concerns which need to be addressed. Importantly, the monitors also noted that police in some states continue to counsel the parties to end the violence and consider the matter to be resolved.

For the third monitoring report, the LCWRI completed an in-depth analysis of court orders and judgments in order to determine the knowledge and practice of the courts with regard to interpretation and use of the law, the nature of reliefs which are granted or denied, and how these reliefs are enforced. They also collected questionnaires from members of the judiciary following training. They asked about the type of domestic violence which occurs, the nature of relief sought, and the reasons for court denial. This information will be vital to improving judicial and Protection officer training so that women may receive effective protection from the PWDVA. A number of cases on issues arising from specific provisions of the law were analyzed. The monitors also described cases which were landmarks in the implementation of the law.

The LCWRI issued a number of conclusions and recommendations. Among them were:

- Sexual violence in marriage is not recognized as a form of violence against women.
- Female relatives of the male perpetrator need to be recognized as proper respondents under the Act.
- Protection Officers must complete a Domestic Incidence Report for every woman that approaches them to support her record of a history of violence.
- Clarity on the role of the police is needed.
- The number of ex parte orders granted is very low. Ex parte orders should be granted as a matter of routine whenever the evidence supports it.
- Court orders for protection must include direction for order enforcement, and courts need to provide updates to the Protection Officers regarding the orders.
- Independent and full-time Protection Officers must be appointed with adequate budget for them to perform their critical duties.
- States should adopt comprehensive systems for monitoring and evaluating the implementation of the law.
- Reporting on specific indicators should be mandatory for all stakeholders.
- Cases filed under the PWDVA should be subject to a uniform registration requirement to facilitate future monitoring.

Challenges in monitoring certain types of violence against women and girls

There are challenges with monitoring certain types of violence against women and girls:

- Domestic violence and sexual harassment should be measured as courses of conduct. Both of these types of violence involve multiple, separate acts which should be considered as a pattern of violence against women and girls. For example, the [Italian government's 2006 nationwide survey](#) on violence against women found that a third of the women surveyed experience both physical and sexual violence, and that the majority of victims experience several violence episodes. See: section on [Domestic Violence](#) and see: [Sexual Harassment: Explore the Issue](#), www.stopvaw.org, The Advocates for Human Rights.
- There may be little information on the prevalence of some types of violence against women. The [Secretary-General's in-depth study on violence against women](#) noted the difficulty of monitoring the prevalence of sexual harassment in countries where there is no legislation to address it, and that in developing countries "little is known about the magnitude of the problem." See: Secretary-General's report, p. 68. See also: [General Recommendation \(2002\)5](#) p. 47.
- There may not be a consensus across states on the definition of some types of violence against women, and therefore, comparative data may not exist. Sexual assault is an example of a form of violence in which there is no consensus on the definition. See: [General Recommendation \(2002\)5](#) p. 45.
- Other forms of violence against women involve complex definitions and hidden practices, such as sex trafficking and female genital mutilation (FGM). The United Nations Office on Drugs and Crime, [Toolkit to Combat Trafficking in Persons, Tool 10.1, Overview of monitoring and evaluation](#) contains tips and resources for monitoring and evaluating trafficking. An agreement on the definition of FGM will enable more accurate documentation in home and diaspora countries. See: [Eliminating female genital mutilation: an interagency statement](#) (2008). For an example of a DHS module on measuring FGM, see: <http://www.measuredhs.com/topics/gender/FGC-CD/module.cfm>. See: [Indicators on violence against women and state response](#), p. 14-15.
- Monitors must ensure that marginalized population groups such as the girl child, the elderly, ethnic minorities, women in detention, and the disabled are included in any monitoring studies on violence against women and girls.
- When monitoring harmful practices such as FGM, monitors should incorporate questions regarding community practices in case new substitutes for illegal practices have been devised.
- Monitors should track promising practices and their results, such as innovative remedies for victims of domestic violence, new methods of achieving victim safety, and advances in public awareness. For example, countries may allow potential victims of FGM to obtain orders for protection, or incorporate sexual violence provisions in the policies of universities and other institutions. See:

[Indicators on violence against women and state response](#), p. 31 and [Higher Education Protocols](#), www.stopvaw.org, The Advocates for Human Rights.

Case study: National Center Against Violence in Mongolia monitors sexual violence and rape prevalence and policy

- In 2008, the [National Center Against Violence](#) in Mongolia completed a monitoring study on sexual violence, rape and relevant legislation. The purpose of the study was to assess the implementation of rape laws, including situations of marital rape, incest, and date rape in Mongolia, and to develop policy and programme recommendations to better protect victims. The researchers collected data from 700 respondents, including 100 legal professionals. They reviewed existing policies and documents, and applied both quantitative and qualitative research methods.
- They surveyed the prevalence of each form of rape: Half of all respondents reported being a victim of marital rape. Only one in ten said that they would seek help from others for this crime, because of family reputation and the fact that law enforcement does not recognize it as a crime. No single incident of a marital rape has ever been recorded, according to their research.
- The researchers also found that date rape is a common occurrence among teenagers and young people. 34.2% of the respondents said that date rape occurs “often.” The study found that date rape remains unreported unless serious consequences, such as STDs or unwanted pregnancy, occur. Eight out of ten respondents reported that there is insufficient public awareness of date rape.
- The study surveyed the public awareness and attitude toward incest using a questionnaire directed at 100 people ages 18-58. Four in ten respondents said that incest did occur in Mongolian homes, and half of these said that a step-daughter was the most vulnerable potential victim. This was supported by a review of legal cases: most of the perpetrators were stepfathers. The questionnaire also revealed that key reasons for not reporting incest are that the victim is under the control of the perpetrator and believes that law enforcement would not respond to the case. The researchers found that victims of incest and date rape mainly approach NGOs for help.
- Monitors found that the majority of rape cases were dismissed during the investigation either because there was no “hard evidence” that the victim objected to the rape or no force was used in the rape. If the forensic report does not indicate any physical injury, the case is dropped.
- Monitors found many barriers to a victim-centered state response: Victims must give statements repeatedly, there are no officers who specialize in victim psychology or the dynamics of rape, victims are blamed, treated like criminals and forced to wait for hours or days for police help, or are told to find the criminal themselves. These factors discourage victims from pursuing a criminal case and thus most of them accept a financial settlement to leave the case.
- The monitors made a number of recommendations, including:

- Amend Mongolian law to create separate provisions on incest, marital rape, and date rape.
- Amend rape laws to reflect rape without force and rape by deception.
- Amend rape laws to include compensation and restitution provisions.
- Train female officers to conduct investigations using protocols which protect victim privacy and safety.
- Develop a code of ethics for vulnerable victims and monitor conduct of law enforcement officers for compliance with the code.
- Crisis centers for victims of sexual violence should offer legal, medical, psychological and rehabilitative services.

Ethical principles in monitoring of laws

- Monitors should integrate ethical standards involving survivor safety and confidentiality into their procedures for monitoring legislation on violence against women.
- Standards for ethical research on issues of violence against women include:
 - The safety of interviewees must be paramount.
 - Participation in research should be strictly voluntary.
 - All identities must be confidential, both in the interview process and in the subsequent report.
 - International human rights must be the foundation of the study.
 - Monitors should conduct relevant country research.
 - Interviewers should prepare an introduction to the study which outlines the purpose of the study and confidentiality procedures.
 - Monitors should be impartial, objective, accurate, and patient.
 - **If survivors are interviewed**, special considerations should be addressed. Privacy and safety must be paramount. Post-interview support services must be available upon request. See the following section on [Ethical issues in interviewing survivors](#).

See: [Putting Women First: Ethical and Safety Recommendations for Research on Domestic Violence Against Women](#); [Perspectives and Standards for Good Practice in Data Collection on Violence against Women at European Level](#); and [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), 2005.

Ethical issues in interviewing survivors

- Survivors of violence can provide valuable information about how the law is being implemented. However, monitors must weigh carefully the benefits of obtaining an interview with a survivor with the risks to her of being interviewed; namely, the risks of severe physical harm, losing her home, and losing custody of her children. Any or all of these may occur if an abuser or an abuser's family finds out that a survivor has contributed information about her situation.
- Valid information about survivor experiences may also be obtained from survivor advocates, attorneys, and medical and social services personnel. If monitors decide to interview survivors, monitors must follow strict ethical standards:
- Interviews must be conducted in a safe and confidential, and completely private setting.
- Informed consent must be obtained; that is, individuals should be informed of the purpose of the study and the nature of the questions which will be asked.
- Individuals should be given the opportunity to skip questions or to end the interview at any time. For example, [The World Health Organization's Multi-Country Study on Women's Health and Domestic Violence against Women](#) used an oral consent process that included a more detailed explanation of the nature of the questions on violence right before they were asked, and respondents were reminded of their option to end the interview. See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), Chapter 2.
- Monitors should interview only one woman per household, so that, for example, a female relative of an abuser may not communicate back to him about the nature of the study in which his wife participated.
- Strict protocols must be followed in removing identifying markers from data before storage and publication.
- Interviewers should be female, and trained in ethics and safety as well as question strategy.
- Questionnaires should be carefully constructed to consider survivor emotions about incidents of violence.
- Survey administrators should make post-survey support available upon request. See: [Indicators on violence against women and state response](#).
- For more information on safely interviewing survivors of violence, see: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), Chapter 2.
- In [Security Begins at Home: Research to Inform the First National Strategy and Action Plan against Domestic Violence in Kosovo](#) (2008), monitors employed a number of measures to ensure an ethical approach: the survey team was taught to use a sensitive method of interviewing respondents to protect both their security and their well-being (p. 8); males surveyed males and females surveyed

females; confidentiality of records was a priority; and surveyors sought to maximize benefits to respondents, i.e. making sure that they received information about services. p.9

CASE STUDY: [Violence Against Women: An International Perspective](#) (2008)

This book compiles the results from an international, comparative survey which documents the experiences of women victims of violence. The authors interviewed over 23,000 women in nine countries: Australia, Costa Rica, Czech Republic, Denmark, Hong Kong, Mozambique, Philippines, Poland, and Switzerland. The survey combines the comparative methodology of the [International Crime Victim Survey](#) with the [National Violence Against Women Survey](#) first developed in Canada in 1993. It is the only comprehensive survey which takes a crime perspective as opposed to a health perspective. The objectives of the survey included building a centralized database for cross-country analysis and utilizing the data for policy making on violence against women, awareness-raising, and improving the response of both the criminal justice system and the social services sector.

The authors discussed the challenges inherent in the collection of data on violence against women, such as fear of the perpetrator, shame, and cultural attitudes. They noted that police statistics, often the only source available on prevalence of violence against women, are not reliable due to the under-reporting of the violence and other factors such as police discretion regarding charging of acts of violence and recording incidents.

The survey can be divided into 3 parts: The experience of violence, consequences of violence, and background information. All-female interviewers were trained in the dynamics of violence against women, safety issues for respondents and interviewers, how to present a nonjudgmental and nonbiased demeanor, and how to respond to emotional trauma. They conducted a combination of telephone and face-to-face interviews. Efforts were made to ensure privacy through flexibility in scheduling and locating the interviews.

The authors analyzed the prevalence and severity of the violence against women in the nine countries, the impact upon and consequences for the victims, and their experiences with the criminal justice system. They presented results on issues including the age, marital status, and socio-economic status of the victims. They also made several recommendations on ending violence against women, including holding offenders accountable and improving services to victims. The authors recommended that all sectors of society work together to eliminate this widespread problem.

See: [International Violence Against Women Survey](#) (2005) and [Violence Against Women: An International Perspective](#) (2008).

For resources on measuring different types of violence against women, see the section on **TOOLS**, below.

Court monitoring

- One innovative strategy to monitor the implementation of a law is to conduct court monitoring through observation of court processes. Monitors should attend civil order for protection hearings, violation of order for protection hearings, and sentencing hearings. Monitors should attend trials and court processes involving violence against women in the criminal justice system. Monitors can then assess the survivor/witness court experience and the attitude and knowledge of the judicial and prosecutorial system on issues of violence against women
- For example, the [Macedonian Women's Center - Shelter Center](#) monitored court proceedings in a recent project. Their report, [The Monitoring of Court Proceedings](#) (2010), identified the strengths and weaknesses of Macedonia's legal framework regarding the protection of women from violence. The report also analyzed the relationship between the courts and other bodies responsible for implementing and enforcing the laws passed to protect women from violence. Monitors found that in cases of criminal domestic violence, poor communication between the police, social services, and the court led to cases being prolonged for 2 years, presenting a severe hardship for a victim needing financial support. The monitors concluded that the report resulted in an increased awareness about the realities of domestic violence proceedings in the justice system, enabling activists to strategize ways to overcome remaining problems in the future.
- In another example, the author of [Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform](#) (2010) observed that there were no physical barriers between victim and aggressor in the hallway waiting area or the mediation area. In the mediation area, the victim was seated directly next to the aggressor. She observed that “the aggressor often intimidated the plaintiff during the proceedings by staring at her and nudging her.” p. 80

Objectives of court monitoring

- To hold the justice system accountable for its actions by maintaining a public presence in the courts
- To identify problem patterns and issues with the court system and to propose practical solutions
- To improve the administration of justice
- To increase public awareness of and public trust in the justice system

Priorities of court monitoring

- To maintain a constructive, rather than adversarial relationship with the justice system
- To help the justice system reach its potential by identifying shortcomings, recommending practical solutions and advocating for change
- To communicate and share information with organizations and agencies that provide direct services and advocacy for victims of abuse and assault

- To recognize and attempt to understand the dilemmas and complexity of the decisions that justice system personnel face
- To help assure that a balance is achieved between defendant's rights and the safety of the community; between efficient proceedings and effective outcomes; between swift discipline and compassionate rehabilitation

Case study: WATCH, a court monitoring program in Minnesota, USA.

[WATCH](#) was founded in 1992 with the goal of holding the justice system in Hennepin County, Minnesota, USA, accountable to its core purposes—protecting the public and ensuring victim safety. The mission of WATCH is to make the courts more effective and responsive in handling cases of violence, particularly against women and children, and to create a more informed and involved public.

The catalyst for WATCH's founding was the brutal sexual assault and murder of a young Minneapolis, Minnesota woman by a paroled prisoner with an extensive history of sex crimes. This highly publicized case prompted a group of citizens to meet with representatives of the justice system and women's advocates to seek solutions. It was determined that a strong public presence in the courtroom could help hold the justice system more accountable for its actions. Trained volunteers first entered Hennepin County courtrooms in March 1993, and have been a constant presence ever since.

Courtroom monitoring is WATCH's primary strategy in creating lasting change in the justice system. Through daily monitoring, WATCH identifies trends and common occurrences that impede justice. WATCH has identified troublesome patterns such as victim safety concerns being minimized, chronic offenders going through the system without serious consequences, high risk offenders being released without bail, and other symptoms of system failure. When patterns become evident, WATCH undertakes further investigation and research into these problems, and seeks systemic solutions.

WATCH holds the justice system to its highest ideals and challenges it to improve outcomes for victims. It provides feedback to judges, attorneys and other court personnel; and informs the public about the local criminal justice system.

(History courtesy of [WATCH, Minnesota.](#))

How WATCH court monitoring works:

Court monitors are physically present in the courtroom on a regular basis. These individuals are volunteers and staff of the monitoring agency who have received training in the criminal and civil justice processes, courtroom decorum and monitoring goals. They monitor court appearances for cases identified by the monitoring agency. The regular presence of monitors reminds all justice system personnel, including judges, attorneys, clerks and administrative personnel, that they are accountable to the public and that the public is interested in what happens in the courtroom in cases of violence against women and girls.

All monitors carry red clipboards so that they will be recognized by court staff. Monitors are trained to watch for and note such things as the following: judicial demeanor, the use of inappropriate humor, timeliness, audibility, acknowledgement of and sensitivity toward victims and victim safety, clarity of explanations given by judges and attorneys, and disruptions in the courtroom. For specific hearings, volunteers are asked to note particular rulings, comments and data that are outlined on monitoring forms tailored to that hearing.

Monitor notes are reviewed by staff, who follow up with appropriate personnel, including judges, attorneys, advocates and probation officers. This follow-up may be to investigate a case further or to comment on the case, either complimenting a judge or other system personnel or pointing out a problem with the way the case was handled. Monitoring agency staff may review court records and files to obtain information about individual cases or patterns and trends in the justice system.

Staff may publicize the results of cases through newsletters or through the media to promote public awareness of these cases and their impact on society.

Monitors focus on cases of violence against women. In many jurisdictions, justice systems have traditionally failed to take crimes of violence against women, such as domestic violence and sexual assault, seriously. Cases of violence against women and girls are prioritized in order to improve the justice system's response and thereby promote victim safety and ensure offender accountability.

Adapted from: [Developing a Court Monitoring Program](#), [WATCH](#), Minneapolis, Minnesota (2000).

Elements of a monitoring report

The following elements are proposed for NGOs which are conducting monitoring studies independent from governmental offices. Many NGOs, however, utilize government statistics offices for monitoring reports to determine the prevalence of violence against women and girls, reporting rates of crimes of violence against women and girls, and other relevant factors.

Background research

Review of international treaties

As part of background research before a monitoring report is commenced, monitors should determine if the state is a party to important treaties, declarations, and conventions which recognize a woman's fundamental right to be free from violence. As noted in [Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform](#) (2010) "International human rights laws and principles can provide an important source of inspiration and a rallying point for social change." p. 69. For example:

- The [Universal Declaration of Human Rights](#) (1948) outlines an individual's fundamental right to be free from violence. In Article 3, it provides that "everyone has the right to life, liberty and security of person." In Article 5 it states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In Article 8 it states that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."
- The [International Covenant on Civil and Political Rights](#) (1976) also provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 7 It states that states shall provide an effective and adequate remedy for acts violating fundamental rights guaranteed by constitution or by law. Article 2
- The [Convention on the Elimination of All Forms of Discrimination against Women](#) (1979) forbids discrimination against women. In [General Recommendation 19](#) (1992), the Committee on the Elimination of Discrimination against Women stated that violence against women constitutes discrimination and recommends that:

States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:

(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace; 24 (t) (i)

- The [Declaration on the Elimination of Violence Against Women](#) (1993) states that:

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

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms; Article 4

- If there are relevant regional conventions, monitors should determine if these have also been ratified by the state.

The monitors of [Response to Domestic Violence and Co-ordinated Victim Protection in the Federation of Bosnia and Herzegovina and the Republika Srpska: Preliminary Findings on the Implementation of the Laws on Protection from Domestic Violence](#) (2009) emphasized the importance of these international human rights standards in developing a response to violence against women. They also noted that other non-binding documents may contain more specific expectations that are based upon these standards, such as the [Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice: Resource Manual](#) (1999) and the [Handbook for legislation on violence against women](#), 2009.

Review of country law and policy

- Monitors should research all country laws and policies relevant to the monitoring project. A summary of these laws and policies should be included in the monitoring report.
- For example, see: [Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices](#) (2009) which provides a detailed analysis of domestic violence legislation in the ASEAN region.
- In another example, [Monitoring of Court Proceedings](#) (2010) by the Macedonia Women's Rights Centre-Shelter Centre contains a detailed introduction to the legal system of the Republic of Macedonia.

- In 2009, The [National Council to Reduce Violence against Women and their Children of Australia](#) published [Domestic Violence Laws in Australia](#), a detailed comparative analysis of all state, territory, and New Zealand domestic violence laws. The study compared the definition of domestic violence used by each entity, and analyzed the laws on orders for protection in each location, among other issues. It also noted potential areas of conflict between order for protection laws and the federal [Family Law Act \(1975\)](#).
- To prepare for advocating for a new or amended law that addresses violence against women and girls, see the [Ongoing Monitoring and Follow-up section](#) of the section on Advocating for New Laws or the Reform of Existing Laws.
- Monitors should consider the following in conducting background research:
 - The constitutions of many countries may also contain provisions which support a woman's right to be free of violence and the duty of a government to provide protection, prosecution and prevention from violence for its citizens.
 - Background research should also address the existence of state legislation on violence against women in the criminal laws, the criminal procedure code, and civil laws.
 - Research into the civil law system should include the family law (including divorce, maintenance or alimony, and child custody provisions), inheritance laws, the rights of minorities, and laws regarding religious freedoms. All of these may impact the issue of violence against women and girls.
 - Monitors should also research applicable administrative procedures relevant to cases of violence against women.
 - Monitors should research the organization of the legal system. They should outline the structure of the courts and determine which ones handle cases on the type of violence against women which is to be monitored. Monitors should determine if the courts have the power to strike down unconstitutional laws.
 - Monitors should determine if an action plan on implementing laws on violence against women is in force, and if ministries in a state are working to implement these provisions.
 - Research should include the existence of national campaigns to raise awareness on the specific type of violence against women which is being monitored, and whether the campaign has been integrated into the national educational curriculum.
 - Monitors should determine the existence of concrete time frames and adequate funding for implementation of laws and policies.

Develop contacts around the country

Monitors should work with local partner organizations to develop a wide network of women's advocacy, human rights groups, and other NGOs which can provide information and assistance in the research. NGOs can provide insight into the problem being researched and into the way individuals and groups relate to each other in different regions of the country. They can often assist in identifying the appropriate people to interview and in arranging the interviews. They will also often help with the logistics in planning an investigative mission when the monitors are from outside a community.

Research literature, folklore, and poetry

Literature, folklore, and poetry often reflect societal attitudes about women and their roles. They may also reflect attitudes about violence against women and its acceptance as normal behavior.

Monitoring multiple aspects of laws

Include general statistics on use of law

- Statistics on the frequency of acts of violence against women should be obtained from relevant government ministries, law enforcement, the judiciary, health professionals, and non-governmental organizations which serve survivors of violence against women. Monitors should note whether or not such data is publicly available and easily accessed. Statistics should also be gathered on the causes and consequences of the acts of violence against women. This includes data on re-offenses and whether or not such offenses involve the same or a different victim. See: [UN Handbook](#), 3.3.2; [Indicators on violence against women and state response](#), p.19.
- Monitors should also determine the number (per population statistics), geographic distribution, and use statistics for hotlines, shelters and crisis centers. See: [Indicators on violence against women and state response](#) p. 28.

Monitoring government expenditures

- Monitors can gain insight into governmental priorities by analyzing government expenditures on implementation of laws, policies and programmes on violence against women and girls.
- Monitors should examine the utilization of funds allocated specifically for gender-based violence and determine the existence and allocation of funds for prosecution and prevention of gender-based violence.
- For information on the methodology of monitoring government budgets, see: [Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW](#) (2006) and UNIFEM's [Gender Responsive Budgeting](#).

Monitoring police records

Monitors should determine the numbers of cases of violence against women and girls that are reported to law enforcement officials. In some states, statistics on these issues will be readily available in administrative offices or national statistics offices; in others, monitors will need to pose strategic questions to government officials in law enforcement administration. This may involve a multi-step process of formal interview requests but it can be well worthwhile. In the [Third Monitoring & Evaluation Report 2009 on the Protection of Women from Domestic Violence Act, 2005](#) by the [Lawyers Collective Women's Rights Initiative](#) in India, monitors found that the process of approaching government officials was very time-consuming because they had to obtain necessary permissions. p.19

Monitoring court records

Monitors should review court records on relevant cases of violence against women and girls. Monitors should review the number of cases of violence against women and girls, the type of cases, whether or not perpetrators are charged, if they go to trial, whether there is a conviction, what sanctions are imposed, and the level of repeat offenders. If there is no central depository of data on court records, monitors should prepare for a lengthy procedure of requesting and obtaining court records. Monitors may have to travel to different locations around the country to view records.

Case study: How to review court records for a study which monitors the implementation of a domestic violence law

1. If a law on domestic violence exists and civil remedies pertain, review civil court files and family court files to determine the number of cases which involve allegations of domestic violence.
 - a. After reviewing the number of files generally, choose a reasonable time period for file review, e.g. one year, two years.
 - b. Determine the total number of cases and the number of cases that involve allegations of domestic violence.
 - i. Describe facts.
 - ii. Describe how court dealt with abuse.
 - iii. If a family law case, did the abuse have any impact on the outcome of the case?
 - iv. Review documents in file including certificates from the forensic hospital. Compare the description of the injuries in the file to the medical certificate. Compare the general description of the injury to the grade or level of assault assigned by the forensic doctor.
2. Review criminal court files to determine the number that involve prosecution of domestic violence crimes. Choose a reasonable time period to review.
 - a. Compare to the total number of criminal cases and to total number of assaults. Look for other interesting comparisons.
 - b. Describe cases in detail, including the facts, how the police handled the case, the resolution of the case and the punishment.
 - c. Review documents in file including certificates from the forensic hospital. Compare the description of the injuries in the file to the medical certificate. Compare the general description of the injury to the grade or level of assault assigned by the forensic doctor.

Promising Practice: Monitoring the Implementation of a Law Using Court Records

In 2005, the state of Minnesota, USA, enacted [legislation](#) making strangulation of a family or household member a felony offense. Since its passage, [WATCH](#), a court monitoring organization in Minneapolis, Minnesota, has monitored the legislation's effectiveness by studying all cases charged under the statute in Hennepin County, Minnesota, between August 1, 2007 and July 31, 2008.

The WATCH report, entitled "[The Impact of Minnesota's Felony Strangulation Law](#)" (May, 2009) documented the initial charges, case disposition, victim/defendant relationship, strangulation method used, contents of criminal complaint, length of sentence, consequences of probation violations, city of incident, and criminal justice personnel involved for each case. The organization attended more than sixty court hearings on domestic strangulation cases during the time period.

Based on this information, WATCH concluded that "the law continues to have a positive impact on victim safety and offender accountability." Conviction rates for cases involving strangulation increased slightly over a previously studied time period, and convictions in cases charged solely under the strangulation statute actually decreased.

The monitoring report also found a significant increase in felony convictions secured for offenses other than strangulation, suggesting that the felony strangulation statute was being used as leverage, particularly in cases where the victim was unwilling or unable to testify. The report also concluded that some improvement was needed with regard to law enforcement officials using appropriate and detailed language in police reports to secure felony strangulation convictions. This particular finding from the monitoring report created a concrete opportunity for police training and/or advocacy within the police.

Amnesty International published a report in 2010 which monitored the implementation of Albania's domestic violence law by studying, among other factors, court records on orders for protection in Tirana, Albania, for the past several years. The report, [Ending Domestic Violence in Albania: The Next Steps](#), found that although hundreds of women have applied for orders for protection since 2007, most of these women later withdrew their petitions or failed to attend court hearings. Through examination of court records, the monitors noted facts about "typical" petitioners and the orders which were actually issued. The report also provided a number of recommendations to the Albanian government, including providing free legal assistance to domestic violence victims and continuing training for judicial and law enforcement officials to ensure effective enforcement of orders for protection.

Interviews for a monitoring report

- Interviews should be conducted with attorneys, prosecutors, judges, probation officers, forensic doctors, police, physicians and other health professionals, NGOs and women’s advocates, academics, media professionals, and religious leaders. Interviews with complainant/survivors should be done only in circumstances in which confidentiality and safety is the primary consideration. See section on [Ethical issues in interviewing survivors of violence](#). All interviews should address the access which complainant/survivors have to the legal system, any barriers to access, and the effectiveness of remedies. See: [UN Handbook](#), 3.3.1.
- Interview questions should always be preceded by a short introduction which describes the monitoring project and the contact information of the monitors.
- If applicable, at the beginning of the interview, monitors should state that sources will be kept confidential and anonymous in the monitoring study. Monitors should assure the interviewee that their words will be attributed to a general descriptor such as “doctor in women’s hospital” or “assistant prosecutor.” Descriptors must be general enough so that the respondent cannot be identified in the future. For example, if only one prosecutor is interviewed, he or she should be identified as a “criminal justice system official” or in another similar way.
- Monitors should always conduct test interviews to make sure that the questions are understandable and answerable. It is important to become familiar with the interview questions, or the methodology, in advance of the first interview so that the interviewer is relaxed and can speak conversationally with the respondent. Ideally, the respondent will not feel pushed to answer the questions and will feel a rapport with the questioner. Interviewers must be careful to listen to all answers without appearing judgmental. See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), 2005, Chapter Ten, for detailed techniques for qualitative research on violence against women.
- Monitors should plan how to record the information. Often it is best to interview each subject with a teammate who will write down the answers or enter them into a computer. The teammate can make note of areas that were not covered, and can ask about those at the end of the interview, and can also ask for clarification of points if necessary. After the interview, monitors should go over the questions and responses with the teammate, and correct any errors while memory is fresh. This is important to achieve a quality end product. Monitors should make a list of follow-up questions for this interviewee, if necessary. Monitors should record any problems that occurred, and, importantly, new insights which will inform subsequent interviews.
- Structured interviews are the best way to obtain the same information from every interviewee. However, the answers may lead to other questions not anticipated. If the area is relevant to the project, following the lead of the interviewee may lead to valuable information. Yet, some interviewees may obfuscate or lead the interviewer away from difficult information. Often, carefully formulated follow-up

questions, asked immediately or in subsequent interviews, will be necessary in order to obtain all of the facts.

- The questions should be organized in a logical sequence and questions on similar topics should be grouped together. Monitors should consider which questions address sensitive topics, and employ those questions towards the end of the interview, when there is a level of comfort and rapport. In general, monitors should always ask the questions that can be answered easily first.
- “Skip patterns” determine the order of specific questions that will be asked according to certain answers in a questionnaire. These are important in order to avoid the impression that the interviewers are not listening to the responses and to improve the flow of an interview. However, it is also important to make certain that if some questions are skipped on the basis of an answer, others are not inadvertently excluded which may be important questions for that particular interviewee. “Skip patterns” should be viewed as a flexible suggestion for each interviewee and not as a rigid pattern. See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), 2005, Chapter Eight.

Analyzing data from the interviews

- It is important to read each set of interview notes many times during the course of the project. As monitors immerse themselves in the transcripts, they will also be able to identify key recurring themes, complicating factors, and contradictory responses which may require further investigation. There are many online tools (e.g. [swivel](#), [many eyes](#)) available for structuring and visualizing qualitative data from interview transcripts. These can be helpful in identifying themes and relationships.
- Data coding, or attaching labels to certain themes in the interview, is one way to manage the information. It enables information from different sources to be sorted and compared. Data can be coded by hand with notes in the margins or on the computer. There are no standard rules on data coding; however, coding should not impair the result. For example, attaching a code to a complex thought expressed by an interviewee should not limit the use of that thought in the report. See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), 2005, Chapter Thirteen.
- There are many online tools available for structuring and visualizing qualitative data such as interview transcripts. This can be extremely helpful in identifying themes, patterns and relationships. These tools are often free and they are relatively easy to use. Users simply upload their data to the program and after that visualizations can be made with a press of a button. Tools such as [Wordle](#) and [Tagcrowd](#) demonstrate simple word groupings, or “word clouds,” whereas [Many Eyes](#) and [Leximancer](#) provide more sophisticated options for data visualization.
- As data accumulates and is studied, draft conclusions may be drawn. These should be checked against ongoing interviews and revised with further analysis.

Determining findings of fact

- In addition to paying attention to what is said, monitors should think about what was unsaid or left out.
- Monitors should identify and record themes and insights from the interviews.
- List of all of the themes discerned. Group similar themes together and prioritize them in order of importance to the research findings.
- Find connections between themes that don't seem to be connected at first in order to see the data in a new way.
- Assemble the data for each theme in one place and look for important relationships between the data, and for relationships between the different themes. Look for the most important relationships between people, events, perceptions and behavior patterns.
- Determine what is significant for the research. Look for the most common norms and patterns in behavior, ideas, perceptions attitudes and expressions. Make note of any important differences.
- Begin the process of writing the report.

Adapted from: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#) (2005), page 205.

For example, in [Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform](#) (2010), the author made the following findings:

- In Brazil, a crime committed in public by a stranger is considered more “serious” than a crime committed in private by an intimate partner. This view was held by the public and also by the authorities, as evidence by the ineffectiveness and lack of response of both the police and the judiciary. p.77
- Citizens did not respect the [Maria da Penha Law](#) (2006) because it so often was unenforced. p. 89
- These findings led to the author’s conclusion that the government of Brazil has failed in its duty to protect women as equal citizens. p. 77

Complicating factors

- Monitors must consider many complicating factors in cases of violence against women and girls. These factors should inform all findings and conclusions of a monitoring study. For example, when monitors investigate the willingness of complainant/survivors to come forward to the police, monitors should consider societal norms and related factors such as the shame attached to the violence, the attitude of the police to victims, the attitude of police to violent offenders, and how a victim's family might react.
- Other complicating factors in cases of violence against women are:
 - Property issues- right of residency or inheritance
 - Child custody laws
 - Matrimonial customs
 - Economic/employment issues
 - Water rights
 - Land ownership
 - Polygamy
 - Education
- For example, the [*Third Monitoring & Evaluation Report 2009 on the Protection of Women from Domestic Violence Act, 2005*](#) noted that in India, usually only the male members of the family are given legal title in the house, and property rights are usually not conferred upon women at marriage. Thus, one of the complicating factors is that dependent victims of domestic violence are often dispossessed from the shared household. "As a result, the woman continues to remain in a violent relationship for fear of becoming homeless." p. 5 [Although Section 17 of the [*Protection of Women from Domestic Violence Act \(2005\)*](#) clearly states the right of a woman to reside in a shared household whether or not she has title, it does not confer upon her the right of ownership in the property.]
- In [*Response to Domestic Violence and Co-ordinated Victim Protection in the Federation of Bosnia and Herzegovina and the Republika Srpska: Preliminary Findings on the Implementation of the Laws on Protection from Domestic Violence*](#) (2009) the monitors noted that "the fact that many couples live in a common household owned by the perpetrator's parents would also appear to be a contributing factor" in the infrequency of use of protective orders. p. 12
- In [*Implementation of the Bulgarian Law on Protection against Domestic Violence*](#), some of the complicating factors cited were weak criminal laws for punishing domestic violence offenders and the belief of some judges that women misuse the domestic violence law. p. 36
- In [*Security Begins at Home: Research to Inform the First National Strategy and Action Plan against Domestic Violence in Kosovo*](#) (2008), monitors identified "social constraints" that affected domestic violence, such as traditional power structures within the family (p. 67) and discrimination in property ownership and inheritance (p. 74).

Gaps in law

- Monitors must discern if there are gaps in existing laws by addressing specific questions to interviewees or survey respondents, or by following up on information gleaned from respondents.
- For example, in [Implementation of the Bulgarian Law on Protection against Domestic Violence](#), the failure of the law to explicitly criminalize violations of orders for protection resulted in confusion on the part of the police as to what action to take. Therefore, responses to violations of orders for protection varied. p. 24 And, because the law did not clearly define the obligation of prosecutors to respond to violations of orders for protection, they did not respond to notification of violations. p. 39
- In [Response to Domestic Violence and Co-ordinated Victim Protection in the Federation of Bosnia and Herzegovina and the Republika Srpska: Preliminary Findings on the Implementation of the Laws on Protection from Domestic Violence](#) (2009) monitors concluded that the failure to include legal aid for domestic violence victims was a clear gap in the law of Bosnia and Herzegovina. p.15
- In [Gender-Based Violence In Tanzania: An Assessment of Policies, Services, and Promising Interventions](#) (2008), monitors noted that Tanzanian law addressed domestic violence minimally in the family law and only through penal code on general violence or assault. The lack of a specific law on domestic violence was noted as a gap by the monitors.

Unintended consequences of law

- In the course of conducting a monitoring study, monitors will likely become aware of unintended consequences of laws on violence against women and girls. For example, the [Staying Alive: Second Monitoring & Evaluation Report](#) from India's [Lawyers Collective Women's Rights Initiative](#) (LCWRI) noted that Protection Officers were asked if they recorded a Domestic Incidence Report. From their replies, the monitors realized that the Protection Officers did not understand their role under the PWDVA and that the Protection Officers had expanded their roles beyond the letter of the law into home visits and counseling. p.42
- Also, the LCWRI monitors noted that in some Indian states, there were a large number of settlements and compromises in cases under the [Protection of Women from Domestic Violence Act](#) (2005). Monitors planned to undertake a detailed analysis of this development to ascertain if these compromises were imposed on women in the name of maintaining the family. p. 179, [Third Monitoring & Evaluation Report 2009 on the Protection of Women from Domestic Violence Act, 2005](#) (2009).
- In [Implementation of the Bulgarian Law on Protection against Domestic Violence](#), a conflict between the Bulgarian domestic violence law and the Child Protection Act allowed a victim's address to be revealed to the aggressor. (p. 13)

- These unintended consequences should be described in the monitoring report, and recommendations should address the best options for eliminating the unintended consequences. See: [Recommendations](#).

Conclusion of monitoring study

Monitors should include a brief conclusion which is supported by a summary of the findings. The conclusion should address positive and negative actions of the government and various stakeholders to implement the law. The conclusion should also provide a summary of the recommendations. For example, see: [Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices](#) (2009), p. 31-34.

Recommendations

- Monitors should utilize the findings of a monitoring report to develop recommendations which are specifically addressed to key stakeholders. These recommendations provide a solid basis for advocacy campaigns. See: section on [Advocating for New Laws or the Reform of Existing Laws](#). For example, in [Implementation of the Bulgarian Law on Protection against Domestic Violence](#) (2008), the authors addressed Priority Recommendations to, among others, the Bulgarian government, including specific government ministries such as the Ministry of the Interior and the Ministry of Justice. The monitors also addressed specific recommendations to Parliament, the police, prosecutors, civil society, and the media. p. 51-53
- In [Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform](#) (2010), the author recommended adequate funding and educational reform in order to implement the Brazilian law on domestic violence. p. 97
- The authors of the [Assessment of the Republic of Armenia Legislation from Gender Based Violence Perspective](#) (2010) addressed numerous civil and criminal RoA laws, discerned gaps in the legislation, and made specific recommendations for each one. They concluded that an adequate response to gender-based violence requires comprehensive legislation in housing, child care, health care, employment, immigration, child custody and visitation, marriage, public benefits, firearms possession, and shelters. The authors also noted that an adequate response to gender-based violence must include drafting and amending a number of laws which were not included in the assessment.
- Monitors should also propose amendments to laws or new laws to address evolving or unaddressed practices. See: [UN Handbook](#), 3.1.6.
- For example, after the [Assessment of the Republic of Armenia Legislation from Gender Based Violence Perspective](#) (2010) was published, a series of focus groups which included representatives of the Armenian government, National Assembly, civil society, and international NGOs were convened to review the

recommendations presented in the assessment from a practitioner's standpoint and to discuss possible strategies for implementation of the recommendations. A final package of recommendations, including amendments to national laws, will be submitted to the RoA government and National Assembly.

Promising Practice: Honduras Monitoring Commission Proposes Amendment and Expands Protection to Victims of Domestic Violence

In Honduras, a [Special Inter-institutional Commission for Monitoring the Implementation of the Law against Domestic Violence](#) was formed after the enactment of the [Honduran Law on Domestic Violence](#) in 1997. The Commission consisted of government members and members from civil society. In 2004, the Commission proposed that protection orders provisions be expanded and that cases of repeat domestic violence should have criminal penalties. Both of these amendments were approved by Congress and have been in effect since 2006.

See: [UN Handbook](#), 3.3.1

Ensuring a quality monitoring project

The following factors improve credibility of a monitoring study:

- Researchers who are familiar with the cultural and historical context in the location of the study.
- The use of multiple sources, methods and investigators in the study. When the views of different stakeholders are considered and compared, important results may be gleaned. Utilizing more than one method, such as interviews and review of court records, provides more information. And, utilizing different researchers bring different skill sets and perspectives to the study.
- Monitors should, if possible, check findings with stakeholders. This can be done informally or with a formal review session. Stakeholders can then react to the data and correct misinterpretations. This will also increase the eventual effectiveness of the monitoring study because the stakeholders will become a part of the process, take ownership of the results, and better implement them in the future.
- Monitors should document the research process by keeping transcripts, notes, and drafts of the report. This will provide an “audit trail” which would allow an independent reviewer to understand the process by which conclusions were reached.
- Footnotes should be carefully checked for accuracy. If the study uses general source descriptors instead of names, maintain careful and secure records.

See: [Researching Violence Against Women: A Practical Guide for Researchers and Activists](#), 2005, Chapter Thirteen

CASE STUDY: Territory of Silence: Women's Human Rights and Violence against Women in Russia

In 2008, [ANNA](#), Russia's National Center for the Prevention of Violence, formed the National Independent Commission on Women's Human Rights and Violence against Women ("the Commission"), comprising advocates and experts on gender-based violence from various regions of Russia. The Commission monitored violations of women's human rights in Russia, and, in 2009, issued a report entitled [Territory of Silence: Women's Human Rights and Violence against Women in Russia](#).

As part of its monitoring study, the Commission reviewed Russia's performance in light of the country's obligations under international law. It found that the systemic failures identified in the study constituted violations of Russia's obligations under various treaties it had ratified, including the [Convention on Elimination of All Forms of Violence against Women](#) (CEDAW) and the [International Covenant on Civil and Political Rights](#).

The Commission gathered data by conducting interviews, analyzing news media coverage, obtaining statistics maintained by government agencies and NGOs, and by compiling its own statistics.

The Commission's report identified four kinds of violations of women's human rights: domestic violence; sexual violence and sexual harassment; trafficking in women; and violent crimes against women as part of traditional practices such as honor killings and bride abduction for the purpose of forced marriage.

The Commission found that each of these human rights violations was widespread in Russia. Domestic violence, for example, was found to affect one out of four families. The Commission also analyzed trends over time and found that the number of registered "household" offenses increased by 47% between 2007 and 2008. Despite the increase in reported domestic violence incidents, between 2006 and 2008, 20 NGOs working to prevent gender-based violence ceased to exist due to inadequate funds and government support. In 2008, only 23 shelters offered services specifically to women victims of domestic violence. The total number of beds for women and children is only 200 for a country with a population of 142 million.

With regard to sexual violence and harassment, the Commission found that the number of sexual harassment cases registered by human rights advocates had increased by 38% over the preceding decade. One in three Russian women had had sex with their superiors at work at least once. 7% of Russian women had been raped by their superiors. 80% of women had received sexual offers in connection with job promotions. These statistics offer a glimpse into the Commission's data gathering methodology: by using several different indicators and questions to measure sexual harassment, the monitors were able to ensure a higher degree of accuracy than a single indicator would have yielded.

The Commission compared official statistics on rape to data from crisis centers and found that the number of cases registered with law enforcement agencies was much lower than the incidence of rapes suggested by the number of calls received by crisis centers. Only 8% of rape victims filed police complaints.

The Commission also examined the issue of trafficking. According to the Commission's findings, tens of thousands of women are trafficked into Russia every year, most of them subjected to sex trafficking. The Commission noted that the number of offenses uncovered by police had increased in recent years. A rehabilitation center for trafficking victims run by the [International Organization for Migration](#) has been in operation since 2007.

In addition to these human rights violations, traditional practices such as bride abduction and "honour" killings also pose a threat to Russian women. According to one estimate, 180 bride abduction cases were registered in Dagestan alone in 2008. The Commission noted that although data on "honour" killings is not available, leaders of women's NGOs continue to report that local law enforcement officials do not investigate cases which are reported as suicides, and that these officials do not prioritize women's safety.

The Commission noted that the state response to all of these human rights violations has been inadequate, as evidenced by law enforcement agencies' refusals to register victims' complaints and their failure to investigate complaints. Police were biased against rape victims and received bribes from perpetrators of "traditional practice" crimes. Other state actors, such as prosecutors and judges, were unresponsive to the needs of victims of gender-based violence. The Commission attributed these shortcomings to a lack of training on the special nature of violence against women.

The Commission also identified several other barriers to effective protection for women victims of violence. For example, most domestic violence victims are forced to prosecute their cases without access to free legal counsel. Protection orders are not available for victims of domestic violence. No comprehensive strategy or national action plan has been adopted by the government to combat violence against women, nor does the government have a system that would allow it to gather data on domestic violence. A review of media coverage of violence against women revealed a pervasive victim-blaming attitude, absence of a human rights perspective, and negative depictions of women.

The Commission's study illustrates the use of several monitoring tools: review of international treaties; review of domestic law and policy; review and comparison of statistics on the prevalence and prosecution of violence against women, compiled from various sources; and use of qualitative methods—in this case, interviews and content analysis of news media—to gather information not readily obtainable in other ways.

Sample methodology to monitor the government's response to legislation on violence against women and girls

The following questions are examples of a methodology for determining the government response to **domestic violence**. With some modification, these same questions can be utilized for other areas of violence against women and girls.

The purpose of the monitoring study will impact the design of methodology. For example, studies which focus on police response might utilize more questions for police officers who have differing responsibilities.

Questions for government crime offices or statistics bureaus

1. How many cases of domestic violence have been reported in the last 12 months? [or since the law was enacted; or other relevant time frame. If the law has been in force for a number of years, the questions should be framed in terms of the last 12 months and then asked again about a number of years combined.]
2. How many cases of domestic violence were reported by women? By men?
3. How many of these cases involved intimate partners? How many involved other family members?
4. How many orders for protection were requested in the last 12 months? How many were granted? How many were denied?
5. How many orders for protection were withdrawn by the victim in the last 12 months? How many were renewed?
6. How many orders for protection were violated in the last 12 months? Of these cases, in how many instances were criminal charges brought against the perpetrator? How many convictions resulted?
7. In the cases where a perpetrator was convicted of violating an order for protection, how many resulted in jail time for the perpetrator? How many resulted in a fine for the perpetrator?
8. How many cases of domestic violence resulted in charges being brought against a perpetrator in the last 12 months? If a victim requested it, would the charge be withdrawn? In how many of these cases were charges withdrawn? How many convictions resulted from these cases?
9. How many cases of domestic violence resulted in fatalities in the last 12 months? In the last (fill in) years?

Questions for police

As first responders to many cases of domestic violence, police are key players in the government response to domestic violence. Police officers can give information about the priority the government gives cases of domestic violence and the government's general attitude toward victims. In many countries, police are the only government representatives to see a case of violence. How the police handle the case is often determinative of whether the woman obtains any legal remedy for the assault.

The following are suggested questions for police officers when monitoring the government response to implementation of laws on domestic violence:

General questions:

1. How many officers are in this police department? What size (geographical, population) group does it serve?
2. What is your position in the department? Can you briefly describe your duties and work? How long have you been working in your position?
3. Can you estimate how often you are asked to respond to domestic violence calls on a weekly basis?
4. Are you aware of (name of country's domestic violence law)?

Procedures:

5. What is the procedure for responding to a report of an assault in a private home between family members? How do you refer to these kinds of assaults? Is the procedure you follow for these kinds of assaults different from the procedure for other kinds of assaults? Is the procedure you follow for domestic assaults different when you receive the report from a neighbor or someone else rather than the victim of the assault?
6. When a woman comes to your police station and says that she is a victim of domestic violence, how do you respond? Is there a group of officers within this department which specializes in handling cases of domestic violence? Are there any female police officers in this group?
7. Other than emergency calls, what other kinds of domestic violence situations are you asked to respond to? What are the procedures for responding to these calls?
8. Do you have a written protocol or policy on responding to domestic violence calls? Could we have a copy of the protocol?
9. Please describe what you generally do when you are called to a domestic dispute. What do you do when you arrive on the scene?
10. Do you have a protocol or procedures that govern interviewing the victim, the perpetrator, children, and witnesses? Do you use a standardized form to obtain information? What questions do you ask? What exactly do you document?
11. Do you ask about prior incidents of violence?
12. How do you interview: 1) victim 2) perpetrator 3) children 4) witnesses? Do you interview these people separately?
13. Do you ever remove an abusive person from the home? If so, can you describe the circumstances?
14. Where do you take the abuser?
15. How long is he removed from the home?
16. Do you file a police report? Is there a clear procedure that you follow regarding police reports? Are you required to file a report? What happens to that report? What concerns do you have in filling out that report? What if the woman does not want a report filed? Could we obtain a copy of a police report?
17. If a woman does not want to prosecute her partner, do you initiate any investigation? What if the woman is seriously injured?

18. What laws do you rely on when you arrest someone for assaulting their wife or intimate partner?
19. What do you do if the woman is injured? Do you assist her in finding medical help? Do you give her information about any legal procedures which she may follow to obtain protection from the violent abuser? Do you refer her to other services, such as domestic violence advocates, crisis centers, or medical services? How do you document her injuries?
20. What do you tell the perpetrator?
21. If the woman is visibly injured and she or her partner attributes her injuries to an accident, e.g. falling, do you follow up with further investigation about the cause of her injuries? How?
22. [In countries where there is an order for protection remedy] Do you have an application for an immediate protection order that you give to victims if they want it?
23. If a victim applies for an immediate protection order, how soon do you get the application to court?
24. In between the time of the violence and the time at which the order for protection becomes effective, how do you ensure the victim's safety if the perpetrator is not under arrest?
25. Do you issue warnings to perpetrators? Do you send police to the house where a domestic violence incident has occurred to keep an eye on it?
26. Do the procedures that apply to domestic violence calls ever vary? If so, under what circumstances?
27. How do you identify whether psychological violence has taken place?
28. How do you identify whether sexual violence has taken place?
29. Is it sometimes difficult to tell who is the victim and who is the perpetrator? What can make that determination difficult? How do you decide who is at fault?
30. Have you ever seen a situation in which a victim of domestic violence was also arrested, charged, or convicted of domestic abuse? What happened?
31. Have you ever encountered a situation in which the perpetrator seemed extremely dangerous? What criteria do you use to assess for direct and immediate threat to life? How do you assess for risk from further attacks? What action do you take in this situation?
32. How long can you hold the perpetrator? Do you ever arrest the perpetrator? Under what circumstances? Do you notify the prosecutor?
33. Are you often called to the same houses or families for incidents of domestic violence? Are there other protocols or policies that you use for this kind of situation? Do you keep records on families that have a history of domestic violence?

Compliance:

34. Have you been called to a home because a perpetrator violated a protection order? How often? How did you respond? Did you arrest? Did you pass the report along to the prosecutor?

35. Does the prosecutor take action if there is a violation of an order for protection? Can you describe a case where this has happened?
36. After the protection order is issued, what measures do you take to ensure the victim is protected? How do you cover the protected area from further aggressions?
37. How do you respond if the victim allows the abuser into the home despite the order for protection?
38. Can you describe how you work together with prosecutors on cases of domestic violence?
39. If a victim of domestic violence proceeds through the court system without the assistance of a state prosecutor, what is your role? Do you help her with the evidence? Have you ever been asked to testify or provide evidence in a case like this?

Implementation:

40. Do you believe that the laws are sufficient to protect domestic violence victims? Do you believe that the law is adequately enforced?
41. What are the good and bad things about implementing the law on domestic violence? What would you change to improve the protection and services that are available to victims?
42. How would you evaluate the response of judges to domestic violence under this law? How would you evaluate the response of prosecutors to domestic violence under this law?

Other:

43. Can you describe a specific example of a case that involved domestic violence?
44. Does your unit maintain internal statistics on domestic violence cases?
45. Are there registers for filing information about past and current orders for protection and previous acts of domestic violence? Registers for information on perpetrators of domestic violence?
46. Do you do preventative work in domestic violence cases?
47. Have you received any training on how to respond to domestic violence calls? Is this training ongoing? By whom?
48. What do you do if the victim or perpetrator does not speak your language?
49. Do you coordinate in any ways with medical, legal or other service providers on your cases of domestic violence? In what ways?
50. How would you describe the level of coordination between the police, other groups, the medical and legal professional community, or the government?
51. What is your perception of the need for stronger criminal protection against domestic violence? What is your assessment as to how the domestic violence law interrelates to the criminal laws?
52. Is there anything else you think we should know about domestic violence in your country?
53. Can you recommend other individuals or organizations for us to speak with?

Questions for prosecutors

Monitors should address a series of questions to prosecutors in different regions of the country. Prosecutors are the state's representatives in the criminal courts and can provide information on the implementation of criminal laws and the state's response to victims of violence. Prosecutors have access to key statistics on domestic violence cases and may provide insight into the priority set by a state on its response to violence against women and girls. Often, cases of domestic violence against women are not prosecuted unless the woman has been seriously injured or killed. It is important both to understand what the law says and how it is applied. It is helpful to have a prosecutor describe the prosecution of assault step by step. The following are suggested questions for prosecutors:

General:

1. Can you briefly describe your work and area of responsibility? What size population does your district serve? How large is your staff of prosecutors? How long have you been a prosecutor? What is the process for becoming a prosecutor?
2. How many cases do you prosecute a year? Can you describe what kinds of cases?
3. Are assault cases involving husband/wife or intimate partners something that your office handles? How are state prosecutors involved in prosecuting domestic violence crimes?
4. Can you estimate how many cases of domestic violence are reported in your district each year? How many cases of domestic violence are charged in your district each year?
5. Does your office keep statistics on domestic violence cases? Do these statistics show the gender of the perpetrator and victim, their relationship, and the severity of the injury?

Procedures:

6. What laws relate to the criminal prosecution of domestic violence?
7. What policies or protocols does your office have regarding prosecution of domestic violence cases? May we have a copy of the policy?
8. Do you have staff members who specialize in prosecuting domestic violence cases?
9. What factors are considered in determining whether to prosecute domestic violence crimes? Who makes the decision?
10. Please describe the procedure involved in the complete prosecution of a domestic violence case.
11. How many cases of domestic violence are declined in your district each year? What are some of the reasons that you decline to prosecute domestic violence cases? What is the most common reason that you decline to prosecute domestic violence cases?
12. How many cases of domestic violence do you dismiss each year? What are some of the reasons that you dismiss cases of domestic violence? What is the most common reason that you dismiss cases of domestic violence?

13. What is the victim's role in the decision to prosecute? What do you do if the victim does not want to proceed with or participate in a prosecution? If the case is prosecuted, what role does the victim play in the prosecution? Are women involved in prosecuting domestic violence cases themselves?
14. Is lack of documentation of the abuse a problem in prosecuting domestic violence crimes? If so, how and why?
15. What type of evidence is suggested for proof of injuries in court?
16. Is there a way that you find out about previous acts of violence in a domestic violence case? Do previous acts of domestic violence affect your actions in a case?

Orders for protection:

17. How many cases of violations of orders for protection are reported in your district each year? How many cases of violations of orders for protections are charged in your district each year?
18. How many cases of violations of orders for protection are declined in your district each year? What are some of the reasons that you decline to prosecute violations of orders for protection cases? What is the most common reason that you decline to prosecute violations of orders for protection cases?
19. How many cases of violations of orders for protection do you dismiss each year? What are some of the reasons that you dismiss cases of violations of orders for protection? What is the most common reason that you dismiss cases of violations of orders for protection?
20. Is lack of documentation of the abuse a problem in prosecuting violations of orders for protection? If so, how and why?
21. What changes in the law would you like to see with regard to your role in responding to violations of protection orders?

Convictions:

22. What are the most common punishments for individuals convicted of domestic assault?
23. What factors do you utilize when setting bail for a perpetrator of domestic violence? Do you utilize a risk assessment? If so, can you provide a copy of the risk assessment that you use?
24. When setting bail for a perpetrator of domestic violence, do you include a provision that the perpetrator must not contact the victim?
25. While the perpetrator of domestic violence remains in jail, is he restrained from contacting the victim of violence?
26. What is the rate of convictions for domestic violence cases in your district each year?
27. What factors influence the sentence you ask for in domestic violence cases? What is the most common sentence that is received by domestic violence perpetrators?
28. Do you have and utilize a process by which you inform the survivor of domestic violence of the decisions that are made on bail, early release, and sentencing of the perpetrator?
29. Do you have and utilize a process by which you inform the survivor of domestic violence of a denial of the case or a dismissal of the case?

Other:

30. Do you work with forensic doctors? If so, what weight do you give to having a certificate? Can a case be prosecuted without one? Are the conclusions on a forensic certificate ever questioned? If so, what happens?
31. Have you received training on the dynamics of domestic violence? Have you received training on how best to prosecute domestic violence cases? Is training in either or both of these areas ongoing for prosecutors in your country? Do new prosecutors receive training on the dynamics of domestic violence cases or on how best to prosecute domestic violence cases? Who offers these trainings?
32. In domestic violence cases, how would you describe the level of coordination between your office and other groups or organizations, such as medical and legal professionals or domestic violence advocates? Can you describe the ways in which you work with these groups or organizations?
33. Have you ever seen a situation in which a victim of domestic abuse was also arrested, charged, or convicted of domestic abuse? Can you describe that situation and what happened?
34. Can you describe a specific example of a case that involved domestic violence? Did your office prosecute the case? What was the basis of the decision whether or not to prosecute? What was the outcome?
35. Do you believe the laws are sufficient to protect domestic violence victims? Are these laws adequately enforced? What are the good things and the bad things about implementing the law on domestic violence? What would you change to improve the protections and services available to victims?
36. Is there anything else you think we should know about domestic violence in your country?
37. Can you recommend other individual or organizations that we should speak with?

Questions for the judiciary

Monitors must also interview members of the judiciary who handle cases of domestic violence. Judges provide a different perspective on the prosecution of domestic assault. They can discuss the prevalence of domestic violence and how cases are treated in the courts. They can also provide information about the penalties people convicted of domestic assault receive. Important information about the court structure may be determined. The judiciary and its court administrators are responsible for victim safety in all aspects of the court process: from the moment a victim enters the court building, through her time in the courtroom, and allowing her to leave the courtroom and the building safely. The following are suggested questions for judges:

General:

1. Can you briefly describe your work and area of responsibility?
2. How long have you been a judge?
3. What is the process for becoming a judge? What are the educational requirements? Is there any requirement of continuing education? Does your office offer continuing training opportunities? Have you had trainings on domestic violence? If so, who organized them?
4. How many cases do you hear a year? What type of cases do you handle?

Procedures:

5. Are domestic violence cases brought before your court?
6. Can you estimate what percentage of your cases are domestic violence cases? Does your office keep statistics on domestic violence cases?
7. Are there specialized courts for the handling of civil domestic violence cases in which orders for protection are sought? If so, do the judges who handle these cases receive specialized training at the beginning of their service or at regular intervals during their service? How many judges handle these cases? What is their approximate caseload?
8. Are there specialized courts for the handling of criminal cases of domestic violence, either assault cases, violations of orders for protection, or other matters such as harassment or stalking? If so, do the judges who handle these cases receive specialized training at the beginning of their service or at regular intervals during their service? How many judges handle these cases? What is their approximate caseload?
9. Do you have specific policies or procedures that govern domestic violence cases?
10. What punishment is available for each of these offenses? What punishment is most commonly given?
11. What is the victim's role in deciding whether or not to go to court? What do you do if a victim does not want to proceed with or participate in a prosecution? Is this a common occurrence? If a victim recants or reconciles with the accused, is the case over?
12. If the case goes to court, what role does the victim play in the prosecution?
13. Is lack of documentation of the abuse a problem in trying domestic violence crimes? If so, how and why?
14. How long does it generally take to prosecute an assault?
15. Do you use forensic doctors? If so, what weight do you give to having a certificate? Can a case be prosecuted without one? Are the conclusions on forensic certificates ever questioned? If so, what happens?

Convictions:

16. What factors are considered in determining whether or not to convict on domestic violence crimes?
17. What factors are considered in sentencing after a conviction for domestic violence? What is the most common sentence?
18. What factors are considered in setting bail for a perpetrator accused of a domestic violence crime?
19. Do you hear criminal assault cases involving domestic violence?
20. Have you ever encountered a situation in which the perpetrator seemed extremely dangerous? What criteria do you use to assess for direct and immediate threat to life? What action do you take in this situation?
21. Do you utilize risk assessments in determining bail, release, or sentencing of domestic violence perpetrators?
22. Have you received training on the dynamics of domestic violence or risk assessments?

23. Have you ever seen a situation in which a victim of domestic abuse was also arrested, charged, or convicted of domestic abuse? Can you describe that situation and what happened?
24. Can you describe a specific example of a case of domestic violence? Was the batterer prosecuted? What was the outcome?
25. Do women prosecute cases of domestic violence unassisted by the state? Are they successful at prosecuting their cases?

Orders for protection:

26. If a victim of domestic violence approaches your court building in order to obtain an order for protection, are there signs and information available to her about the process? Are there court personnel who are trained to assist victims in completing the request for an order for protection? Is it necessary for a victim of domestic violence to obtain a lawyer before attempting to file for an order for protection?
27. Do standardized forms exist for victims who want to file for an order for protection? (If so, obtain a copy.) If not, would it be helpful to have such form? What are some of the essential facts that it should contain? Are these available throughout your country? Are petitioners able to complete them without the help of an attorney?
28. Is there a fee for filing for an order for protection? If the application form for an order for protection is returned to the petitioner due to irregularities, does the petitioner have a chance to amend it?
29. How many requests for immediate or emergency orders for protection do you personally receive each month? Out of these applications, what percentage do you typically grant?
30. How long does it take for an immediate or emergency order for protection to be issued?
31. How many requests for general as opposed to immediate orders for protection do you personally receive in an average month?
32. Does your court system provide advocates for victims of domestic violence who may have questions or concerns about the process of filing for an order for protection? Are these advocates provided free of charge?
33. What is the shortest time within which a subpoena can be served?
34. Have you issued orders for protection based solely on the declaration of the victim?
35. Can you give an example of a case where you did not issue an order for protection based solely on the declaration of the victim?
36. What are some of the reasons you have found it necessary to deny a request for an order for protection?
 - if the answer is "procedural problems, ask "Can you give some examples of those procedural problems?"
 - if the answer is "reasons are usually contained in the evidence," ask "Can you give us some examples of those evidentiary reasons?"
 - do these reasons differ when the order for protection is based solely on the declaration of the victim?

37. How often, at the open hearing, is there an evidentiary dispute between the parties? Can you give us an example, and the ultimate disposition of the case?
38. How do you assess the credibility of both parties?
39. Have you found it necessary to deny any specific request set out in the petition for an order for protection? Can you give us examples?
40. Have you issued an order for protection when only psychological violence was involved? Examples?
41. Do you ever order the respondent to provide financial support or other compensation to the petitioner?
42. Is there a way for you to know if the perpetrator has previously violated orders for protection? Would you know this from a petition or an internal procedure? When a respondent has been the subject of a prior order for protection, do you include more restrictions on the respondent in your order? Do you include more protections for the applicants?
43. Have you ever learned that a protective order that you issued was violated by the perpetrator? Do you impose sanctions? What types? What did you do?
44. During the hearing, do you refer the petitioner to advocates or advocacy programs in the community?
45. (If applicable under country law) Have you handled requests for orders for protection initiated by social services or a relative of the victim? Can you tell us the circumstances? In any of these cases, has the victim requested that the application be withdrawn? What was the outcome?
46. What role does the social assistance agency play in cases of domestic violence? Has it been helpful or detrimental to the victim and children? Can you explain?
47. Has a victim ever returned to ask for the dismissal of an order for protection? Why? What did you do?
48. Does your court system provide information about free legal assistance for victims of domestic violence?
49. What happens to an order for protection when the respondent fails to appear at the hearing? What if the petitioner/victim fails to appear?

Children:

50. Do you address child custody and visitation in a protection order? Describe what exactly you specify (details, times, places, alcohol/drugs, third party)
51. When issuing a protection order where children are involved, how do you determine child custody and visitation where:
 - the child is not injured
 - the child is injured
 - the child is a witness to the violence? Specific examples?
52. What evidence do you require when child abuse is involved?
53. What role do social services play in a protection order when child abuse is involved?
54. Do you address the issue of child custody in the emergency order? Do you separate the children from the perpetrator in the immediate or emergency order?

Rights of victims:

55. Have you had incidences of the respondent intimidating or threatening the petitioner before, during, or immediately after the hearing?
56. Before a hearing on a domestic violence case, are perpetrators and victims directed to separate entrances of the court building in order that they do not meet?
57. Are there separate waiting rooms for victims of domestic violence and for violent offenders? If there is a violence threat or assault in the courtroom, how can it be handled?
58. Is there an escort service which a victim of domestic violence may utilize in order to leave the court building in safety?
59. Do all victims receive a copy of the court orders which are made?
60. Are there translation services available for victims who do not speak your language? Are the court documents translated for these victims?
61. Are there court costs for victims of domestic violence who file for orders of protection?
62. Do you provide counseling on reconciliation for victims of domestic violence and perpetrators during court hearings on domestic violence or during court hearings on obtaining or enforcing orders for protection?
63. In your experience, what has been the overall effect of the law on domestic violence? Can you elaborate? Do you believe that the laws are sufficient to protect domestic violence victims? Are these laws adequately enforced? What are the good things and the bad things about implementing the domestic violence law? What would you change to improve the protections and services available to victims?
64. In your opinion, how has the court responded to the law?
65. How has law enforcement responded to the law?
66. How have prosecutors responded to violations of the protection orders under the law?
67. Can you describe a specific example(s) of a domestic violence case and what happened?
68. What is your assessment as to how the domestic violence law interrelates to the criminal laws?
69. Do you believe that the criminal laws are sufficient to protect victims of domestic violence? Has anyone applied for a protection order in conjunction with a criminal prosecution for bodily injury? What was the outcome?
70. Does the court maintain internal statistics on protection order cases? What specifically does the court monitor?

Divorce:

71. Do you hear divorce cases? How many per year?
72. Is no fault divorce available?
73. What percent of divorce cases involve allegations of domestic violence?
74. Have you ever had an application for a protection order during a divorce or child custody procedure? Can you describe the facts of the case and the outcome? Were there any obstacles issuing the protection order in these cases?

75. How would you describe the level of coordination between other groups, the medical and legal professional community, the NGOs, and the government?
76. Is there anything else you think we should know about domestic violence in your country?
77. Can you recommend other individuals or organizations for us to speak with?

Questions for attorneys

Attorneys can provide information about how individual women are treated by the legal system. Some attorneys may also be able to provide information about the prevalence of the problem. The following are suggested questions for private attorneys on the issue of domestic violence cases:

General:

1. What kinds of legal services do you provide?
2. How are clients generally referred to you?
3. Do you receive funding for programs to serve battered women? If yes, what kinds of programs provide this funding?
4. Are there training programs for people such as you who serve victims of domestic violence? Who offers these programs?

Procedures:

5. Have you had any cases involving a woman who experienced domestic violence using the law on domestic violence?
6. Can you describe the facts of the case?
7. What was the outcome of the case?
8. Did you need to document the abuse? If so, how did you do that?
9. Did you rely on a forensic certificate? Was it difficult to obtain this certificate? Why or why not?
10. What other types of documentation did you use?
11. Have you represented a client in an order for protection hearing where the only evidence submitted was her statement? What happened? Do judges require more than the victim's statement as evidence?
12. Did your clients have any concerns about seeking help for domestic violence, such as where they would live during the resolution of the case, or custody of the children, financial concerns, or concern about the reaction of their extended family or community?
13. Do judges usually grant all forms of relief that the petitioner requests?
14. Do your clients experience problems with compliance with the order for protection? Can you give examples of what happened?
15. Have you ever had or heard of a woman victim who asked for dismissal of the order for protection? Why? What happened?

Children:

16. Have you represented clients seeking a protection order with children? How was custody and visitation determined where:

- the child was not injured
 - the child was injured
 - the child was a witness to the violence. Specific examples?
17. What evidence did the court require when child abuse was involved?
18. Have you requested child custody and visitation in the protection order? What did you request and what was granted in the order?

Rights of victims:

19. Have you requested that the respondent provide financial support or other compensation to the petitioner? What specifically did you request and what was granted?
20. Have you seen or heard of any problems with victim safety in the courtroom? What happened?
21. (In countries where there is no order for protection remedy) When domestic violence is an issue, what kinds of legal assistance are you asked to provide?
22. What assistance are you able to offer a victim of domestic violence?
23. If you were not able to assist a client, were you able to refer her to another resource? Who?
24. When the police are called in a case of domestic violence, how would you describe their response? Can you give some specific examples?
25. Have you ever seen a situation in which a victim of domestic violence was also arrested, charged, or convicted of domestic abuse?
26. What medical or other community services are available to victims of domestic violence?
27. Are they affordable?
28. Are the clients who come to you familiar with these services?
29. Are there any reasons why women might not seek out these services?
30. How would you describe the level of coordination between your organization and other groups, the medical and legal professional community, or the government?
31. Who are your allies in the community, in terms of issues that are of concern to battered women? How do you collaborate with these allies?
32. Are you aware of other ways in which a woman may try to seek help if she is being beaten? What are some of these other ways?
33. Have you seen instances in which regional differences have affected the treatment received by clients seeking relief based on domestic violence? Can you give examples?

Divorce:

34. What is the procedure for getting a divorce?
35. Do you know what percent of marriages here end in divorce?
36. Is a legal or permanent separation an option for couples?
37. Do you know what percent of marriages involve a legal or permanent separation?
38. In your opinion, how are women who seek a divorce or separation viewed by society?
39. Of the divorce or separation cases which you have handled, approximately how many involved domestic violence?

40. If domestic violence is a factor in a divorce or separation case, does that affect the procedure for obtaining the divorce or separation?
41. Can you describe some divorce or separation cases you have handled which involved domestic violence? Have you ever represented a client who sought a protection order during a divorce or child custody procedure? Can you describe the facts of the case and the outcome? Were there any obstacles to obtaining the protection order in these cases?
42. In your opinion, if domestic violence is involved in a divorce or separation, does it affect how a woman is viewed by her family? By society?

Cultural issues:

43. In your experience, what factors in your laws and culture might affect the ability or willingness of victims of domestic violence to seek protection from abuse? To seek assistance from the police? To seek medical assistance? To participate in criminal prosecutions? To seek civil legal assistance such as separation or divorce? Are there other ways in which factors in law and culture might have an impact? Can you provide examples?
44. Do any of the professionals mentioned, such as the police, prosecutors, and doctors, take steps to address any of these factors in law and society? Do government agencies take such steps? Community or domestic violence organizations? International organizations? Can you provide examples?
45. Have you ever encountered a situation in which a particular kind of relief was not acceptable to a woman because of culture? How have you responded in these situations?
46. Have you assisted a client who has spent any time in a battered women's shelter? How did she describe her experiences there?
47. In your opinion, do such issues as polygamy, lack of contraceptives, the shortage of jobs or of housing have an effect upon the ability of a woman to leave a situation of domestic violence? How?
48. Are there other factors which might make it difficult for a woman to leave a situation of domestic violence?

Implementation:

49. Do you believe that the laws are sufficient to protect victims of domestic violence? Are these laws adequately enforced?
50. What do you believe is good or bad about how the law is implemented? What works and what does not?
51. How would you evaluate the response of judges to domestic violence victims under this law?
52. How would you evaluate the response of prosecutors to domestic violence under this law?
53. What is your assessment of attitudes by police and judges toward 1) victims 2) children 3) perpetrators
54. Have you ever represented a client in a criminal prosecution of domestic violence (bodily injuries)? Describe the facts of the case and the outcome. Did the client also seek a protection order?

55. What is your perception of the need for stronger criminal protection against domestic violence? What is your assessment on how the domestic violence law interrelates to the criminal law?
56. How would you describe the level of coordination between the legal profession, the criminal justice system, the medical community, and the government when it comes to domestic violence victims?
57. Are you aware of any statistics regarding the prevalence of domestic violence in your country?
58. Are you aware of any research or studies being done on domestic violence here?
59. Is there anything else you think we should know?

Questions for victim service organizations

Victim service organizations can provide insight into the experience of victims of violence against women and girls. From them, monitors can gain information which will help to determine the efficacy of the law and protocols, determine gaps in its scope and effectiveness, and identify unintended consequences of the enactment and enforcement of the existing law. Questions should also address the existence, capacity and use of support services for victims.

General:

1. What services does your organization provide?
2. How are women referred to you? Do you refer women to other resources? Which ones?
3. At what point do most clients seek your services? Do you see the same women on multiple occasions?
4. What concerns do your clients express to you? What concerns specifically about domestic violence do your clients express to you?

Procedures:

5. If a woman is a victim of domestic violence, is there a hotline that she can call? Is the hotline free of charge? Is it available 24 hours per day, 7 days a week? Who staffs the hotline? What training do the staff members receive?
6. Does your crisis center run a hotline for victims of violence? How many calls do you receive per month? How many do you receive per year?
7. Do women who come to your center sometimes call the national emergency line when they have been a victim of domestic violence? What do they report about the reception and information they are given by the national responders?
8. How many places do you have in your shelter for individuals or families to stay? What is the population amount that your shelter serves?
9. How long may a victim and her family stay at your shelter?
10. What kinds of problems do women encounter in housing because of domestic violence? What can be done to resolve these problems?

Rights of victims:

11. Do you provide a victim and her family with medical services? Are these services free of charge?
12. Do you provide a victim and her family with legal services? Are these services free of charge?
13. Do you provide advocacy services for domestic violence victims? Do you help them to file for orders of protection? Do you accompany them to court to obtain the forms, to file the forms, and for court hearings?
14. Do you work with victims of domestic violence to formulate safety plans for themselves and for their children?
15. Do you provide counseling for victims of domestic violence? Do you provide counseling for their children?
16. Do you provide economic counseling for victims of domestic violence? Do you provide them with referrals to training programs for employment opportunities?
17. How long may a victim continue to access your counseling services?
18. Do you provide counseling and advocacy services that are specifically directed at minority groups in your area's population?
19. Do you provide counseling and advocacy services for girls who are victims of violence?
20. What is your assessment of the state role in establishing and supporting service centres for victims of domestic violence? Are you aware of any such centres?
21. Do you find it necessary to turn away victims of domestic violence because your shelter is full or your crisis centre has reached capacity? How many victims do you turn away each month? Are there other reasons that you must turn away victims of domestic violence?
22. What is the first point of contact with the legal system for most of your clients who experience domestic violence? Do you work with lawyers? In what ways?
23. Do you feel that victims of domestic violence can access the legal system? Why or why not? In what ways could the legal system be improved for these victims?
24. Are you aware of the law on domestic violence? Have you undergone trainings on this law?
25. Do you believe that the law is adequately enforced?
26. Do your clients who are victims of domestic violence have knowledge about the legal system, particularly about family law and laws related to domestic violence? Is that knowledge accurate?
27. Do you serve clients who have used the law to seek an order for protection? If so, could you describe the case(s) and your role in them? Do you believe the victim was adequately protected? Why or why not?
28. How would you evaluate the police, prosecutor, and judicial responses to the needs of battered women under this law?
29. Can you give specific examples or stories that pertain to a battered woman's experience with the police, prosecutorial or judicial system? What concerns have your clients expressed to you regarding the police, prosecutorial or judicial system?

30. Have you ever seen a situation in which a victim of domestic violence was also arrested, charged or convicted of domestic abuse? How often? What happens in those situations?
31. What kinds of medical treatment do clients generally seek following episodes of violence?
32. How well does the medical system respond to the needs of victims of domestic violence? How could this response be improved?
33. What experience do you have with forensic doctors? How well do forensic doctors respond to the needs of victims of domestic violence?
34. Can you give examples or stories about the experiences which battered women have had when accessing medical treatment?

Other:

35. Can you describe the overall attitude toward domestic violence in the community?
36. Are there social or religious pressures for women to remain with their batterer? How do you address these pressures with your clients? Can you give examples?
37. Are the laws in your country sufficient to protect battered women? Are the laws adequately enforced? What are the good things and the bad things about the implementation of the law? What would you change to improve the protection and services available to victims?
38. Can you provide a specific example or story of a client's circumstances that particularly illuminate the problems that battered women face in your country?
39. Can you provide me with a list of the other crisis centers in your city and country that address the needs of victims of domestic violence and their families? Are crisis centers or shelters available in rural and urban areas of your country?
40. How would you describe the level of coordination between your organization and other groups, the medical and legal communities, and the government? Have you become aware of the presence or absence of coordination between different groups?
41. Who are your allies in the community, in terms of issues that are of concern to victims of domestic violence? How do you collaborate with these allies?
42. Is there anything else you think we should know about violence against women in your country?
43. Can you recommend other individuals or organizations to speak with?

Questions for medical professionals

Medical professionals can provide information about the nature and prevalence of violence against women and girls. They can describe typical cases and reactions of women and girls to the violence. Medical professionals may also be able to provide information about the response of the police and their willingness to investigate domestic abuse. Monitors should obtain information from emergency room doctors, general practitioners, and forensic doctors. See below for specific questions for forensic doctors.

General:

1. Can you describe briefly your work and area of responsibility?
2. Do you treat victims who sustain injuries as a result of violence in the home? Can you estimate the number of domestic violence victims you see per day, per week, per month? Of all the injuries you see in your clinic in one month, what percent would you say are the result of domestic violence?
3. Can you describe the ways in which victims of violence in the home typically access medical services at your facility?
4. What are your primary concerns in serving these women?
5. How is your hospital or clinic principally funded? Do patients pay for treatment?
6. Do you receive funding for programs to serve women who experience violence in the home? If yes, what kinds of programs?

Procedures:

7. Does your health care facility have policies and procedures in place about treating victims who experience violence in the home by a husband/boyfriend? (If so, ask for a copy) What are they? Do you think they are used consistently? Do you have policies regarding the gender of the health care provider in cases involving this type of violence?
8. Do you see injuries that you suspect are the result of violence in the home, but are explained by the patient by another reason? How many of these cases do you see? Could you describe the type of injuries you see in patients you identify as victims of domestic violence? Typically, how does the woman explain her injuries? How do you handle these cases? How many of these injuries are fatal?
9. Do you typically ask patients if they experience violence in their home by husbands/boyfriends? If so, when do you ask about violence in the home?
- 10.10. If a woman tells you that her injuries are the result of violence in the home by her husband/boyfriend, what do you do? Do you document the injuries in a particular way? Do you refer her to other services? Do you recommend follow-up medical care?
11. Do you commonly see victims of domestic violence more than once for injuries inflicted by their spouse or partner? How are these cases generally documented and catalogued in medical records?
12. What are common characteristics you see in victims of domestic violence?
13. Are you required to report cases of violence by a husband/partner? If so, in what circumstances? To whom?
14. Are you required to keep any official statistics on the number of domestic violence cases you see?
15. Are there unique challenges that face women who are victims of violence in the home depending on whether they live in rural or urban areas?
- 16.16. Have you found that victims of domestic violence are generally willing to discuss the circumstances surrounding their injuries? What are these patients' primary hesitations/concerns, if any, in speaking with you regarding violence in the home?
17. Do patients who have been victims of domestic violence ever request assistance other than medical treatment? What type of assistance?

18. Do you know of any services that may be available to them? Do you provide this information to them? Are they open to receiving information from health providers? Do they seek information about assistance from you? What kinds of information are they most interested in receiving? Medical/health? Legal? Social service? Public aid or assistance?
19. Are patients who have been victims of domestic violence treated for mental health problems? Do you prescribe drugs to treat mental health problems?
20. How would you describe the level of coordination between your hospital or clinic and community groups, legal professionals, or the government?
21. Who are your allies in the community, in terms of issues that are of concern to women victims of violence in the home? How do you collaborate with these allies?
22. Can you describe your relationship or interaction with police or other legal personnel with regard to women who are victims of violence in the home? Are there specific policies that direct or govern these interactions? (If so, obtain copy.)
23. Are you aware of any laws that dictate your responsibility as a health professional with regard to cases of violence in the home? If so, what are these? Are there policies that dictate this responsibility? (If so, obtain copy.)

Training:

24. Have you or your staff received any training related to documenting, for legal purposes, injuries that are the result of violence in the home? What kind of training?
25. Have you or your staff participated in training specific to the screening, treatment, and documentation of injuries resulting from violence in the home?

Other:

26. Can you provide a specific example or story of a patient's circumstances?
27. Can you recommend other individuals or organizations to speak with?
28. Are there doctors, nurses, and other employees in the emergency room that we can speak with? Other hospital employees?
29. If there were anything that should be changed to improve the medical services provided to battered women, what would that be?
30. Is there anything else you think we should know?

Questions for forensic doctors

Many countries require women to have their injuries documented by a forensic doctor to be used as evidence in court. Problems arise with this system because the doctors are generally asked to grade injuries into legal categories that determine the potential remedies available to the victim of violence. In domestic violence cases, doctors may ask questions about the assault and place their own value judgment on the situation. For example, if a doctor feels that a woman provoked the assault, the doctor may grade the assault lower than the actual injuries warrant. Forensic doctors can provide very

useful information about the legal system and how the doctors interact with courts. The following are suggested questions for forensic doctors:

1. How many patients do you see per day?
2. How many of these cases involve allegations of domestic assault?
3. What is the purpose of an assault victim seeing a forensic doctor?
4. Describe how the injuries are documented.
5. Do you discuss the circumstances surrounding the injury?
6. Are women victims of domestic violence generally willing to discuss their abuse?
7. Do you handle domestic assault cases differently than you would a stranger assault?
8. Do you take into account the woman's behavior during the incident when filling out any part of the medical certificate?

Questions for academics, journalists, and the religious community

Academics, journalists and the religious community can provide information about societal attitudes toward domestic violence and services available to victims of domestic violence. They can also provide insight into the level of trust women have for the police and other governmental officials. They can discuss women's attitudes toward violence and their willingness to discuss the problem with each other. The following are suggested questions for people who do not fall into the legal, social services, or medical category, but who may have useful information:

1. What is your view of how widespread the problem of domestic violence is?
2. How does the government currently respond to victims of domestic violence? Police response? Court response?
3. Are there social services available to victims of domestic violence, e.g. shelters, hotlines, counseling centres?
4. Are there any private organizations or political groups dealing with the problem of domestic violence?
5. What is your opinion about the level of concern of the general population about the problem of domestic violence?
6. Are cases of death or serious injury caused by domestic violence publicized in the media? How are they handled? How does the media commonly refer to cases of domestic assault?
7. Do women discuss problems of domestic violence among themselves?
8. Do women discuss problems of domestic violence with their clergyperson?
9. Are there social pressures or family pressures to abuse (or not to abuse)?
10. Are there social pressures or family pressures for women to stay with their abuser? What are some of the reasons that people use to convince a woman to stay with her abuser?
11. What is your opinion about the most common causes of domestic violence?

Questions about children witnessing domestic violence

Cases involving domestic violence may have children as witnesses. It is important to ascertain if children are being removed from the custody of complainant/survivors when they seek help for domestic violence.

These questions can be used when interviewing any of the professionals listed above:

1. If a domestic assault occurs in front of the children, does that in any way affect the legal system's response? Do the police or courts take the matter more seriously?
2. Are battered women in danger of losing custody of their children if they report abuse? If so, explain how and why?
3. Is a child witnessing domestic violence considered to be a form of child abuse? If so who is considered to be the abuser of the child? The batterer, the mother, both?
4. Are there any services for children who witness domestic violence?
5. Have there been any studies on children's exposure to domestic violence?
6. Is there anyone you think we should talk to about this issue?

Questions about violence against children

These questions can be used when interviewing any of the professionals listed above:

1. Are you aware of children being subjected to violence in the home?
2. How often does this occur?
3. Who is perpetrating the violence?
4. Who reports child abuse and child sexual abuse?
5. Are there mandated reporters?
6. Are you aware of children being sexually assaulted in the home?
7. How often does this occur?
8. Who is perpetrating the violence?
9. In your opinion how often does violence against children overlap with violence against women? Are there any programs or services addressing the overlap?
10. What are the societal practices around corporal punishment?
11. Are there laws regarding defining physical discipline versus abuse of children?
12. Does the state get involved in cases of child abuse? If so, how?
13. Are there criminal sanctions for abuse of children? Are these cases considered under the general assault codes or are there laws specific to child abuse?
14. Are children removed from the home when child abuse occurs? If so how does that work? Where do they go? For how long? Who decides when they should be removed and when and if to return them? Is there a foster care program?
15. Are children removed from the home when sexual abuse occurs? If so how does that work? Where do they go? For how long? Who decides when they should be removed and when and if to return them?
16. Are there services for victims of child abuse and child sexual abuse? If so what kind? Who provides them?
17. Are there services for parents who have committed child abuse or child sexual abuse? If so, what kind? Who provides them? Are they mandatory or voluntary? Is continued, or regaining, custody of the abused child contingent on completing programming?

18. Have there been public awareness campaigns on child abuse? Who sponsored the campaigns? What have they been like? How have they been effective or ineffective?
19. Are the laws sufficient to protect abused children? Are these laws adequately enforced? What would you change to improve the protections and services available to victims?
20. Can you recommend other individuals or organizations to speak with?
21. Is there anything else you think we should know?

TOOLS FOR MONITORING THE IMPLEMENTATION OF LEGISLATION

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