United Nations Nations Unies

Good practices in legislation on violence against women

Expert group meeting

organized by

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

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

Report of the expert group meeting

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

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Part I. Background and scope of the meeting

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

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

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

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

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

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

The list of documents and programme of work

through a consultative process. In Turkey, a three-year extensive awareness-raising campaign and interactions with law-makers conducted by the Women's Platform for the

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

Laws on violence against women should also create mechanisms to:

- monitor implementation of legal reforms to assess how well they are working in practice; and
- keep legislation under constant review and continue to reform it in the light of new information and understanding.

Coordinated and gender-sensitive implementation of legislation

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

The expert group meeting highlighted the importance of coordination among entities (such as the judiciary, police, prosecutors, probation, advocacy groups, providers of services to complainants/survivors, and social service agencies), at all levels of government (local, regional, federal), and between government and civil society, to ensure the thorough and gender-sensitive implementation of legislation on violence against women. In the past, many countries have coordinated res

agencies, local businesses, media, employers and faith-based leaders, seek to coordinate their activities to better protect and support survivors of domestic violence. The coordinated community response helps ensure that the system works more effectively and efficiently for victims, better protects and provides victims with the services they need, and holds perpetrators accountable.

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Introduction to the framework

Content of the framework

This framework contains recommendations on what should be included in legislation on violence against women. Each recommendation is followed by a commentary explaining

Terminology

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

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

The term “legislation” is used throughout the framework

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Framework for legislation on violence against women

1. *Legislative preamble*

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

C. Comprehensive legislative approach

Recommendation

Legislation should:

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

Commentary

A growing number of countries are adopting specific legislation and/or legislative provisions on violence against women. Many of these enactments focus primarily on

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

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

2. Implementation

A. Amendment and/or removal of conflicting legal provisions

Recommendation

Legislation should:

- provide for the amendment and/or removal of provisions contained in other areas of law, such as family and divorce law, property law, housing rules and regulations,

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

B. National action plan or strategy

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

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

C. Budget

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

- creating a general obligation on Government to provide an adequate budget for the implementation of the relevant activities; and/or
- requesting the allocation of funding for a specific activity, for example, the creation of a specialized prosecutor's office; and/or

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

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

There is evidence that specialized units are more responsive and effective in dealing with violence against women. Experience has shown that the establishment of such units may facilitate the development of expertise in this area and may result in an increase in the number of cases investigated and a better quality and more efficient process for the enexu ss effec

domestic violence, including divorce and child custody proceedings and criminal proceedings. By streamlining and centralizing court processes, such integrated courts eliminate contradictory orders, improve complainant/survivor safety, and reduce the need for complainants/survivors to testify repeatedly. However, it is important to ensure that the complainant/survivor retains control over the proceedings and does not feel forced to take actions, such as divorce or separation, when she is not ready. The Spanish experience suggests that proceedings in specialized courts sometimes progress too rapidly for complainants/survivors and, as a result, some complainants/survivors withdraw from the process. It is also important to ensure that all relevant professi

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

o mandate adequate funding for the mechanism.

Commentary

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

A Special Inter-institutional Commission for Monitoring the Implementation of the Law

to addressing the needs of complainants/survivors of violence. In Indonesia, Presidential Decree Number 181/1998 established the National Commission on Violence Against Women (Komnas Perempuan) which is an i

4. Definitions

A. Defining forms of violence against women

Recommendation

Legislation should:

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

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

B. Defining domestic violence

i. Comprehensive definition of types of domestic violence

Recommendation

Legislation should:

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

Commentary

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

Recommendation
Legislation should apply at a minimum to:
- individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household.

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

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

C. Defining sexual violence

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

Recommendation

For example, Canada's Criminal Code provides for the graded offences of sexual assault (section 271), sexual assault with a weapon, threats to a third party, or causing bodily harm (section 272), and aggravated sexual assault, wherein the

In 2003, the introduction of the *Criminal Code (Sexual Offences and Crimes against Children) Act 2002*

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

5. Prevention

A. Incorporation of provisions on prevention of violence against women

Recommendation

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

- awareness-raising activities regarding women's human rights, gender equality and the right of women to be free from violence;
- use of educational curricula to modify discriminatory social and cultural patterns of behaviour, as well as derogatory gender stereotypes; and
- sensitization of the media regarding violence against women.

Commentary

Early legislative responses to violence against women tended to focus solely on criminalization and thus did not attempt to address the root causes of violence against women. Over time, however, the importance of including preventive measures in legislation has been increasingly emphasized. The recently adopted *Law against Femicide and other Forms of Violence against Women* (2008) in Guatemala states that the Government is responsible for inter-agency coordination, the promotion and monitoring of awareness-raising campaigns, generating dialogue and promoting public policies to prevent violence against women. Article 8 of the Brazilian *Maria da Penha Law* (2006) provides for integrated prevention measures, including encouraging the communications media to avoid stereotyped roles that legitimize or encourage domestic and family violence, public educational campaigns, and emphasis, in educational curricula at all levels, on human rights and the problem of domestic and family violence against women. Chapter II of the Venezuelan *Law About Violence against Women and the Family* (1998) provides for policies on prevention of violence and assistance to survivors. The Supreme Court of India, in the case of *Vishaka v State of Rajasthan & Ors AIR*

Brazilian *Maria da Penha Law* (2006) calls for the communi

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

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

States are increasingly providing legislative mandates for the establishment of services. Article 17 of the Guatemalan *Law against Femicide and other Forms of Violence against Women* (2008) requires the Government to guarantee survivors of violence access to integrated service centres, including by providing financial resources. The Mexican *Law on Access of Women to a Life Free of Violence* (2007) requires the State to support the installation and maintenance of shelters. In Turkey, the *Local Administration Law* requires the creation of shelters in municipalities with more than 50,000 inhabitants. Under the *Violence Protection Act* (1997) in Austria, all provinces must establish intervention centres where complainants/survivors of domestic violence are proactively offered assistance after interventions by the police. The intervention centres are run by women's non-governmental organizations and financed by the Ministry of the Interior and the Ministry of Women on the basis of five-year contr 0.32 Tw ss, sn B T( )TjEMC /P 6MCID 1 (.on Ac

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

C. Support for the survivor in her employment

Recommendation
Legislation should:

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

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

D. Housing rights of the survivor

Recommendation
Legislation should:

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

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

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

E. Financial support for the survivor

Recommendation

Legislation should:

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

Commentary

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

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

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

Commentary

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

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;
  -

- details of events in relation to their case, including specific places and times of hearings; and
- release of the perpetrator from pre-trial detention or from jail; and

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

Commentary

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

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

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

C. Pro-arrest and pro-prosecution policies

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

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

Recommendation

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

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

Commentary

Legal aid, including independent legal advice, are critical components of complainants/survivors' access to, and understanding of, the legal system and the remedies to which they are entitled. Legal representation has proven to increase the likelihood of a positive outcome for the complainant/survivor in the legal process. For -0.0028 Tw 12k

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

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

In the United Kingdom and the United States of America, the prosecution has the

Namibia's *Combating of Rape Act* (2000) stipulates that the complainant has the right to attend at court personally, or to request that the prosecutor present the relevant information on her behalf if the accused has applied for bail. Section 5 of the

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

Commentary

The diligent collection of medical and forensic evidence is an important duty of public authorities. Various countries are applying greater diligence in the collection of evidence

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

I. No adverse inference from delay in reporting

Recommendation

Legislation should:

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

Commentary

Complainants/survivors of violence often delay in reporting the violation to public authorities. Such delays may be due to a number of reasons, inclpt the complainant inform

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

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

K. No offence of "false accusation"

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

Commentary

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Commentary

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

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

B. Relationship between protection orders and other legal proceedings

Recommendation

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

C. Content and issuance of protection orders

Recommendation

Legislation should provide:

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

Commentary

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

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

E. Post-hearing orders

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

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

F. Standing in application for protection orders

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

Commentary
Different experiences exist regarding who should apply for protection orders**.** Some argue that only the complainant/survivor should be able to apply, while others argue that police, social workers, and other family memb

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

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

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

Recommendation
Legislation should state:

- that live testimony or a sworn statement or affidavit of the complainant/survivor9,442.92 15 refBT/P

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

I. Criminal offence of violation of a protection order

Recommendation
Legislation should:
- criminalize violations of protection orders.

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

9. Sentencing

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

Recommendation
Legislation should provide that:

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

Commentary

Sentences imposed in cases of violence against women within countries have varied, been inconsistent and often informed by discriminatory attitudes held by justice officials regarding complainants/survivors of violence against women. Efforts have been undertaken to reduce sentencing discrepancies and to ensure that sentences in cases of violence against women are commensurate with the gravity of the crime committed. Experience shows that the introduction of se(ag)6(ains.1iscrimaCommenTd wibuomm95 suratm)8(itted5

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

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

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

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

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

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

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

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

E. Restitution and compensation for survivors

Recommendation

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

Commentary

Alternative sentencing refers to all sentences and punishment other than prison incarceration, including community service and/or the requirement that the perpetrator attend an intervention programme for perpetrators. An increasing number of countries provide for the option of a sentence mandating that a perpetrator attend an intervention programme for perpetrators either in addition to, or in substitution for, other penalties. While there have been some positive experiences with such programmes, service providers for survivors have emphasized that, where limited funding is available, services for survivors should be prioritized over programmes for perpetrators, and that such sentences should only be imposed following an assessment to ensure that there will be no risk to the safety of the survivor. Articles 11 to 20 of the Costa Rican *Criminalization of Violence against Women Law* (2007) provide detailed instructions on when alternative sentences may be imposed and the alternatives available. In Spain, the *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides the possibility of suspension or substitution of other penalties in cases of violence against women, when the possible jail penalty would be less than two years. In cases where the sentence is suspended, the perpetrator is obliged to

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

It is therefore important to clarify the relationship between customary and/or religious law and the formal justice system, and to codify the survivor’s right to be treated in

Commentary

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

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

12. Violence against women and asylum law

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

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

Annex I. List of participants

Experts

Carmen de la Fuente Méndez
Pueblos Unidos
General Aranda No. 28F
2 Izquierda
28029 Madrid, Spain
Email: cdelafuente@pueblosunidos.org
encalma@hotmail.com

Sally Goldfarb
Associate Professor
Rutgers School of Law – Camden
217 North Fifth Street
Camden, NJ, 08102
Email: sfg@camlaw.rutgers.edu

Rowena Guanzon
Professorial Lecturer, University of the Philippines College of Law
Steering Committee Member, Asia Cause Lawyers Network
Steering Committee Member, Gender Justice Network (Manila)
Suite 311 Centro Plaza, Scout Torillo cor. Sct. Madrinan,
South Triangle, Quezon City 1103
Philippines
Email: rowena.guanzon@gmail.com
Weblog: www.bingguanzon.com

Claudia Herrmannsdorfer
Programa de Prevención y Atención a la Violencia
contra las Mujeres
Centro de Derechos de Mujeres/CLADEM
Colonia Lara Norte, Calle Principal
Tegucigalpa, Honduras
Email: claudiaherr85@gmail.com

Pinar Ilkkaracan
Founding President
Women for Women's Human Rights – New Ways
Inonu Caddesi Saadet Apt 29/6
Gumusssuyu 34437 Istanbul
Turkey
Email: pinar_ilk@superonline.com

P. Imrana Jalal

Human Rights Advisor
Pacific Regional Rights Resource Team (RRRT),
Private Mail Bag, Pacific House, Butt St,
Suva, Fiji
Email: imranaj@spc.int

Olufunmilayo Johnson
Domestic violence implementation lawyer
Equality & Diversity Unit,
50 Ludgate Hill,
London EC4M 7EX
Tel: 020 7796 8688
Fax: 020 7796 8077
Email: Funmi.Johnson@cps.gsi.gov.uk

Naina Kapur
Legal Consultant and Director
S

ndungunjoki@yahoo.com

Theodora Obiageli Nwankwo
Executive Director
Civil Resource Development and Documentation Centre (CIRDDOC)
Fourth Dimension Complex, 16 Fifth Ave, City Layout, Enugu,
Enugu State, Nigeria
Email: nwankwooby@yahoo.com

Renée Römkens
Professor of Victimology/Interpersonal Violence

Christine Brautigam
Chief, Women's Rights Section
DAW/DESA
2 United Nations Plaza
New York, NY 10017 USA
Tel : +1212 963 0535
Fax : +1212 963 3463
Email: brautigamc@un.org

Gemma Connell
Women's Rights Section
DAW/DESA
2 United Nations Plaza
New York, NY 10017 USA
Tel : +1917 367 5242
Fax : +1212 963 3463
Email: connell@un.org

United Nations Office on Drugs and Crime

Claudia Baroni
Organized Crime and Criminal Justice Section
Division for Treaty Affairs
United Nations Office on Drugs and Crime
Room E-1246
Tel: + 43 1 26060 5558
Fax: + 43 1 26060 5898
Email: claudia.baroni@unodc.org

Loide A. N. Lungameni
Legal Officer
Organized Crime and Criminal Justice Section
United Nations Office on Drugs and Crime
PO Box 500, A-1400, Vienna, Austria
Tel +43 1 26060-5457
Fax +43 1 26060-7-5457
Email: Loide.Lungameni@unodc.org

Observers

Committee on the Elimination of Discrimination against Women

Dubravka Šimonović
Chairperson
Committee on the Elimination of Discrimination against Women
Tel. +38514569993
Email: dsimon@mvp.hr

United Nations system

Office of the UN High Commissioner for Human Rights (OHCHR)

Gloria Carrera Massana
Special Procedures Division - Violence against Women mandate
Office of the UN High Commissioner for Human Rights
Mailing address: UNOG-OHCHR, CH-1211 Geneva 10
Street address: Palais Wilson, Geneva, office 3-035
Tel. +41 22 917 9120; Fax: +41 22917 9006
E-mail: gcarrera@ohchr.org

UNIFEM

Dina Deligiorgis
Knowledge Management Specialist on Violence against Women
United Nations Development Fund for Women (UNIFEM)
New York
UNIFEM
Email: dina.deligiorgis@unifem.org

Intergovernmental Organizations

International Organization for Migration (IOM)

Tanja Dedovic
Project Development Officer
International Organization for Migration
IOM Vienna
Nibelungengasse 13/4
1010 Vienna
Tel: +43 1 585 33 22 21
Fax: +43 1 585 33 22 30
E-mail: tdedovic@iom.int

Inter-Parliamentary Union (IPU)

Kareen Jabre
Manager
Programme for Partnership between Men and Women
Inter-Parliamentary Union
Tel: +41229194125
Email: kj@mail.ipu.org

Civil society

Richard Pearshouse
Director, Research & Policy
Canadian HIV/AIDS Legal Network
Tel.: +1 416 595 1666 ext. 230
Email: rpearshouse@aidslaw.ca

Nisha Varia
Senior Researcher on Women's Rights in Asia
Women's Rights Division
Human Rights WTd(r18 ÞBDC 0.0026 Tc 0 Tw ToC 0 ÞBDC 0.n000C 0CIDon 0" 0) 1 5MC /P ⁄ÅMC4 3423 ⁄0
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	on violence against women
16:00-16:15	• **Tea/Coffee break**
16:15-18:00	**Good practices in legislation on violence against women: country experiences (cont.)**
16:15-16:25 16:25-16:35 16:35-16:45 16:45-16:55 16:55-17:05 17:05-18:00	• Funmi Johnson (United Kingdom) • Rosa Logar (Austria) • Naina Kapur (India) • Pinar Ilkkaracan (Turkey) • Njoki Ndungu (Kenya) • *Plenary Discussion: identifying strengths and weaknesses, highlighting effective approaches, and noting good practices in legislation on violence against women*
TUESDAY, 27 MAY 2008	
10:00-11:15	**Good practices in legislation on violence against women: country experiences and regional perspectives (plenary discussion and preparation for Working Groups)**
10:00-11:00 **11:00-11:15**	• *Discussion: recapping day one; Preparation for Working Groups* • **Tea/Coffee break**
11:15-13:00	**Working Groups**
11:15-13:00	• Working Groups meet and prepare proposals
13:00-14:30	**Lunch break**
14:30-18:00	**Working Groups; and preliminary presentation of Working Group proposals**
14:30-16:45 **16:45-17:00** 17:00-18:00	• Working Group discussions (cont) • **Tea/Coffee break** • Plenary: Presentations of preliminary proposals by Working Groups
WEDNESDAY, 28 MAY 2008	
10:00-15:30	**Presentation, discussion and completion of Working Group proposals**
10:00-11:30 **11:30-11:45** 11:45-13:00	• Presentation, discussion and completion of Working Group proposals • **Tea/Coffee break** • Presentation, discussion and completion of Working Group proposals (cont)
13:00-14:00	**Lunch break**
14:00-15:30	**Presentation, discussion and completion of Working Group proposals (cont)**
14:00-15:30 **15:30-16:00**	• Presentation, discussion and completion of Working Group proposals (cont) • **Tea/Coffee break**
16:00-17:00	**Finalization and adoption of the report and closing of the meeting**

Annex III. List of documents

A. PAPERS BY EXPERTS

EGM/GPLVAW/2008/EP.01	Legal Reform on Domestic Violence in Central and Eastern Europe and the Former Soviet Union Cheryl A. Thomas
EGM/GPLVAW/2008/EP.02	The Struggle for Justice: The State's Response to

EGM/GPLVAW/2008/EP.11	Spanish Legislation on Violence against Women: Challenges and Facts Carmen de la Fuente Mendez
EGM/GPLVAW/2008/EP.12	Laws on Violence against Women in the Philippines Rowena V. Guanzon
EGM/GPLVAW/2008/EP.13	Good Practices in Legislation on Violence against Women in Turkey and Problems of Implementation Pinar Ilkkaracan and Liz Ercevik Amado
EGM/GPLVAW/2008/EP.14	The Amendments Process of the Law on Domestic

EGM/GPLVAW/2008/BP.02

UNODC Draft Model Legislation on Trafficking in Persons

United Nations Office on Drugs and Crime